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10  
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16

17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **IN AND FOR THE COUNTY OF CONTRA COSTA**  
19  
20

21 **PEOPLE OF THE STATE OF CALIFORNIA, and**  
22 **PEOPLE OF THE STATE OF CALIFORNIA, ex**  
23 **rel., the REGIONAL WATER QUALITY**  
**CONTROL BOARD, CENTRAL VALLEY**  
**REGION,**

24 Plaintiffs,

25 v.

26 **ALBERT D. SEENO CONSTRUCTION CO., and**  
27 **DOES 1 through 10, inclusive,**

28 Defendants.

Exempt from fees pursuant to  
Government Code Section 6103

2000 JAN -9 P 12:22

K. TORRE, CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CALIF.  
By: D. Wagner, Deputy Clerk

CASE NO. **C08 00071**

**COMPLAINT FOR  
PERMANENT INJUNCTION,  
CIVIL PENALTIES AND  
OTHER EQUITABLE  
RELIEF**

(Water Code § 13000 *et seq.*; Fish  
& Game Code § 1600 *et seq.*, §  
5650 *et seq.*, Bus. & Prof. Code §  
17200 *et seq.*)

PER LOCAL RULE 5 THIS  
CASE IS ASSIGNED TO  
DEPT \_\_\_\_\_

1       **PLAINTIFFS, PEOPLE OF THE STATE OF CALIFORNIA and PEOPLE OF THE**  
2 **STATE OF CALIFORNIA, *ex rel.*, the REGIONAL WATER QUALITY CONTROL**  
3 **BOARD, CENTRAL VALLEY REGION**, based on information and belief, alleges as follows:

4                               **PLAINTIFF**

5       1.   Plaintiffs, PEOPLE OF THE STATE OF CALIFORNIA, and PEOPLE OF THE  
6 STATE OF CALIFORNIA, *ex rel.*, the REGIONAL WATER QUALITY CONTROL BOARD,  
7 CENTRAL VALLEY REGION (“People”), bring this action by and through Edmund G. Brown  
8 Jr., Attorney General of the State of California (“Attorney General”), and by and through Robert  
9 J. Kochly, District Attorney of the County of Contra Costa (“Prosecutors”).

10       2.   This action also is brought by the Attorney General at the request of the Regional  
11 Water Quality Control Board, Central Valley Region, (“Regional Water Board”) on behalf of the  
12 People of the State of California. Regional Water Board is a public agency of the State of  
13 California and was established and authorized by the Porter-Cologne Water Quality Control Act  
14 (“Porter-Cologne Act”). Within the Central Valley Region, which includes portions of Contra  
15 Costa County, the Regional Water Board is responsible for the control of water pollution.

16       3.   This action, brought pursuant to Water Code section 13000 *et seq.*, Fish and Game  
17 Code section 1600 *et seq.* and section 5650 *et seq.*, and Business and Professions Code sections  
18 17203, 17204 and 17206, to impose civil liability on the Defendants, to obtain a permanent  
19 injunction and other equitable relief against the Defendants, and to obtain civil penalties and  
20 restitution from them, as authorized by statutes contained in the California Water Code, the Fish  
21 and Game Code, and the Business & Professions Code.

22       4.   Plaintiff brings this action without prejudice to any other action or claims which it may  
23 have based on separate, independent and unrelated violations of laws, statutes, regulations, or  
24 ordinances, or of California Business and Professions Code section 17200 *et seq.*, by the  
25 Defendants and/or on facts which are not alleged in this Complaint.

26                               **DEFENDANTS**

27       5.   Defendant ALBERT D. SEENO CONSTRUCTION CO., was at all relevant times and  
28 still is the owner of some or all of the properties identified as the Mira Vista Subdivision in

1 Antioch, Contra Costa County, California. The Mira Vista Subdivision includes development  
2 phases known as Mira Vista 13 ("MV-13") and Mira Vista 16 ("MV-16"). Albert D. Seen  
3 Construction Co., is a limited liability company, and its principal place of business is 4021 Port  
4 Chicago Highway, Concord, California. The Managing Partner of Defendant Albert D. Seen  
5 Construction Co. is Albert D. Seen Construction Co., Inc. The President of Managing Partner  
6 Albert D. Seen Construction Co., Inc., is Albert D. Seen, Jr.

7 6. Defendants DOES ONE through TEN inclusive are sued herein pursuant to Code of  
8 Civil Procedure section 474. The names and capacities, whether individual, corporate or  
9 otherwise, of those defendants named as herein as Does 1 through 10, inclusive, are unknown at  
10 this time to Plaintiffs, who therefore sue said defendants by such fictitious names and Plaintiffs  
11 will amend this Complaint to show their true names and capacities when that information has  
12 been ascertained.

13 7. At all times herein mentioned, each and every Defendant was the agent and/or  
14 employee of their co-Defendants, and each of them, and was acting in the course and scope,  
15 purpose and authority of that agency and/or employment and with the knowledge, permission and  
16 consent of said co-Defendants, and each of them.

### 17 **ACTS OF THE DEFENDANTS**

18 8. Defendant Albert D. Seen Construction Co. controls a huge tract of property known  
19 as the Mira Vista Subdivision project, which is located in the City of Antioch, Contra Costa  
20 County, California, and has been under development for more than 20 years. An Environmental  
21 Impact Report prepared in 1980 documented the impacts projected from significant alterations of  
22 drainage characteristics on the site and others in the area. The property has been developed in  
23 phases, including development phases known as MV-13 and MV-16.

24 9. Beginning in March 2004, Defendant Albert D. Seen Construction Co. caused one of  
25 the property phases, MV13, to be graded for development, including grading over a pond and a  
26 connected tributary watercourse, and removed vegetation that would otherwise protect against  
27 discharges of sediment into these watercourse areas. In April 2004 and through the remainder of  
28 2004, Defendant Albert D. Seen Construction Co. continued the grading work and installed a

1 subdrain component underneath the former pond and watercourse, and deposited soil to fill in the  
2 pond and watercourse areas on the MV 13 property. Subcontractors for Defendant Albert D.  
3 Seeno Construction Co. documented in letters, field reports, and photographs the grading and  
4 filling of a creek and pond on that MV13 parcel, and no state or federal permits were sought or  
5 obtained for the alteration of that creek or watercourse.

6 10. In 2002 and 2003, Defendant Albert D. Seeno Construction Co. caused the grading of  
7 another phase, MV16, which impacted swales (water-filled depressions), drainage areas, and  
8 watercourses on the MV16 parcel. After the impacts were caused by Defendant Albert D. Seeno  
9 Construction Co., a storm drain had to be installed to accept water runoff from the property.  
10 Once again, no state or federal permits were sought or obtained for the grading or filling of the  
11 swales, drainage areas, or watercourses on the MV16 parcel.

12 11. In June 2004, Warden Nicole Kozicki of the California Department of Fish and Game  
13 received information that a pond and tributary previously assessed and mapped on the MV 13  
14 property had been filled in with soil during the grading in 2004 conducted by Defendant Albert  
15 D. Seeno Construction Co. Warden Kozicki also inspected the site on several occasions in 2004  
16 and 2005, took aerial photos, and collected data and reports to show that the pond and tributary  
17 watercourse were connected by a storm drain that leads to Markley Creek, which eventually  
18 drains to West Antioch Creek and the bay delta waters, which are waters of the State of  
19 California.

20 12. On October 13 and 20, 2005, Regional Water Board staff inspected the MV13 site.  
21 The Regional Water Board served Defendant Albert D. Seeno Construction Co. with a Notice of  
22 Violation on April 14, 2006, finding that construction activities at MV13 resulted in the  
23 unauthorized discharge of fill material within the waters of California and the waters of the  
24 United States. The Regional Water Board also indicated that the construction activities appeared  
25 to have been conducted without the appropriate state and federal permits and water quality  
26 certification documents.

27 13. Due to Defendant Albert D. Seeno Construction Co.'s failure to comply with the  
28 statutes, regulations and other requirements governing water and stream pollution activities, the

1 the Regional Water Board has incurred, and will continue to incur, costs arising from the  
2 investigation, administration, and enforcement of California laws.

3 14. Pursuant to Fish and Game Code section 5650, subdivision (a), "it is unlawful to  
4 deposit in, permit to pass into, or place where it can pass into the waters of this state any . . .  
5 substance or material deleterious to fish, plant life, or bird life," except in compliance with a  
6 State or Regional Water Board permit. Any person who violates section 5650 is liable for civil  
7 penalties, pursuant to Fish and Game Code section 5650.1.

8 15. Due to Defendant Albert D. Seeno Construction Co.'s unlawful discharges, the  
9 Department of Fish and Game has incurred, and will continue to incur, costs arising from the  
10 investigation, administration, and enforcement of Fish and Game Code section 1600 *et seq.* and  
11 section 5650 *et seq.*

12 16. Plaintiff is informed and believe and thereupon allege that Defendants, and each of  
13 them, engaged in actions in violation of applicable water pollution and streambed protection  
14 laws, including violations associated with permitting requirements, and including violations  
15 which occurred at or in connection with the Mira Vista properties known as MV 13 and MV 16,  
16 located in Antioch, Contra Costa County, California during the relevant period of this action.

17 17. Defendant Albert D. Seeno Construction Co.'s noncompliance threatened and  
18 continues to threaten the environment.

19 18. Plaintiffs and Defendant Albert D. Seeno Construction Co. entered into a series of  
20 agreements to toll any applicable statute of limitations. As a result of these agreements, the  
21 period of time from March 19, 2007, through the date of the filing of the Complaint herein,  
22 inclusive, (the "Tolling Period"), will not be included in computing the time limited by any  
23 statute of limitations under the causes of action against Defendant Albert D. Seeno Construction  
24 Co. that may arise out of claims covered by the tolling agreement. Those claims include the  
25 claims that are brought in this action against Defendant Albert D. Seeno Construction Co.

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1 **FIRST CAUSE OF ACTION**

2 **SUBSTANTIALLY CHANGING THE BED, CHANNEL OR BANK OF A**  
3 **STREAM WITHOUT A PERMIT FROM THE DEPARTMENT OF FISH AND**  
4 **GAME PURSUANT TO FISH AND GAME CODE SECTION 1600 *et seq.***

5 **(STREAMBED ALTERATION)**

6 19. Plaintiffs reallege and incorporate by reference, as though set forth in full herein, the  
7 allegations contained in Paragraphs 1 through 18, inclusive, of this Complaint.

8 20. Plaintiffs are informed and believe and thereupon allege that Defendants, and each of  
9 them, substantially diverted the natural flow and substantially changed the bed, channel, and  
10 bank of a stream designated by the Department of Fish and Game, and without first notifying the  
11 Department of Fish and Game and without obtaining a permit from the Department of Fish and  
12 Game pursuant to California Fish and Game Code sections 1601 and 1603. Defendants' conduct  
13 includes acts committed or directed to be committed on property known as the Mira Vista  
14 Subdivision project, which is located in the City of Antioch, Contra Costa County, California.

15 21. Defendants and each of them are liable for civil penalties as set forth in California Fish  
16 and Game Code section 1600 *et seq.*, for each and every separate violation of any of these  
17 provisions of the California Fish and Game Code and any permit, rule, regulation, standard, or  
18 requirement issued or promulgated pursuant thereto, which occurred within three years after the  
19 discovery of the facts constituting grounds for commencing the action on these claims, exclusive  
20 of the Tolling Period set forth in Paragraph 18 herein.

21 22. Defendants must be immediately and permanently enjoined from further violations of  
22 California Fish and Game Code section 1600 *et seq.*

23 **SECOND CAUSE OF ACTION**

24 **DEPOSITING IN, PERMITTING TO PASS INTO, OR PLACING WHERE IT**  
25 **CAN PASS INTO THE WATERS OF THIS STATE SUBSTANCES OR**  
26 **MATERIAL DELETERIOUS TO FISH OR PLANT LIFE IN VIOLATION OF**  
27 **FISH AND GAME CODE SECTION 5650 *et seq.***

28 **(WATER POLLUTION)**

23. Plaintiffs reallege and incorporate by reference, as though set forth in full herein, the  
allegations contained in Paragraphs 1 through 22, inclusive, of this Complaint.

24. Plaintiffs are informed and believe and thereupon allege that Defendants, and each of them, unlawfully deposited and caused to be deposited in, permitted to pass into, and placed where it can pass into the waters of this State a substance or material deleterious to fish and plant life, in violation of California Fish and Game Code section 5650 *et seq.* Defendants' conduct includes acts committed or directed to be committed on property known as the Mira Vista Subdivision project, which is located in the City of Antioch, Contra Costa County, California.

25. Defendants and each of them are liable for civil penalties as set forth in California Fish and Game Code section 5650 *et seq.*, for each and every separate violation of any of these provisions of the California Fish and Game Code and any permit, rule, regulation, standard, or requirement issued or promulgated pursuant thereto, which occurred within three years after the discovery of the facts constituting grounds for commencing the action on these claims, exclusive of the Tolling Period set forth in Paragraph 18 herein.

26. Defendants must be immediately and permanently enjoined from further violations of California Fish and Game Code section 5650 *et seq.*

### THIRD CAUSE OF ACTION

**DISCHARGING OR PROPOSING TO DISCHARGE WASTE INTO THE WATERS OF THIS STATE WITHOUT FIRST REPORTING TO OR OBTAINING A PERMIT FROM THE REGIONAL WATER BOARD IN VIOLATION OF WATER CODE SECTION 13000 *et seq.***

**(WASTE DISCHARGE REQUIREMENTS)**

27. Plaintiffs reallege and incorporate by reference, as though set forth in full herein, the allegations contained in Paragraphs 1 through 26, inclusive, of this Complaint.

28. Plaintiffs are informed and believe and thereupon allege that Defendants, and each of them, unlawfully discharged or proposed to discharge waste into the waters of this State without first reporting to or obtaining waste discharge requirements from the Regional Water Board, in violation of California Water Code section 13260 *et seq.* Defendants' conduct includes acts committed or directed to be committed on property known as the Mira Vista Subdivision project, which is located in the City of Antioch, Contra Costa County, California.

29. Defendants and each of them are civilly liable as set forth in California Water Code

1 section 13000 *et seq.*, for each and every separate violation of any of these provisions of the  
2 California Water Code and any permit, rule, regulation, standard, or requirement issued or  
3 promulgated pursuant thereto, which occurred within three years after the discovery of the facts  
4 constituting grounds for commencing the action on these claims, exclusive of the Tolling Period  
5 set forth in Paragraph 18 herein.

6 30. Defendants must be immediately and permanently enjoined from further violations of  
7 California Water Code section 13000 *et seq.*

8 **FOURTH CAUSE OF ACTION**

9 **UNLAWFUL, UNFAIR, OR ILLEGAL BUSINESS PRACTICES**

10 **(UNFAIR COMPETITION LAWS)**

11 31. Plaintiffs reallege and incorporate by reference, as though set forth in full herein, the  
12 allegations contained in Paragraphs 1 through 30, inclusive, of this Complaint.

13 32. Pursuant to California Business and Professions Code section 17206, Defendants are  
14 liable for civil penalties for each and every separate violation that accrued within four years of  
15 this Complaint, exclusive of the tolling periods set forth in Paragraph 18 herein. Defendants  
16 have engaged in unlawful acts, omissions, and practices that constitute unfair competition within  
17 the meaning of California Business and Professions Code section 17200 *et seq.*, including but not  
18 limited to the following:

19 a. The acts or omissions and practices alleged in the FIRST through THIRD Causes  
20 of Action, above.

21 33. By the acts described herein, Defendants engaged in daily acts of unlawful and/or  
22 unfair competition prohibited by California Business and Professions Code sections 17200-  
23 17208. Each and every separate act constitutes an unlawful and/or unfair business practice.  
24 Each day that Defendants engaged in each separate unlawful act, omission or practice is a  
25 separate and distinct violation of Business and Professions Code section 17200.

26 34. Defendants must be immediately and permanently enjoined, pursuant to California  
27 Business and Professions Code section 17203, from engaging in activities that, as alleged in this  
28 Complaint, violate California statutes and implementing regulations and local and municipal



ordinances, and which thereby constitute unfair competition within the meaning of California Business and Professions Code section 17200.

**PRAYER**

WHEREFORE, PLAINTIFFS PRAY FOR THE FOLLOWING RELIEF:

1. A Permanent Injunction restraining and enjoining Defendants, and their partners, directors, officers, agents, employees, representatives, and all persons acting under or in concert with Defendants, from failing to comply with those provisions of California Fish and Game Code, section 1600 *et seq.* section 5650 *et seq.* and implementing regulations, which Defendants are alleged to have violated;

2. A Permanent Injunction restraining and enjoining Defendants, and their partners, directors, officers, agents, employees, representatives, and all persons acting under or in concert with Defendants, from failing to comply with those provisions of California Water Code section 13000 *et seq.* and implementing regulations, which Defendants are alleged to have violated;

3. A Permanent Injunction restraining and enjoining Defendants, and their partners, directors, officers, agents, employees, representatives, and all persons acting under or in concert with Defendants, from failing to comply with those provisions of California Business and Professions Code, section 17200 *et seq.*, which Defendants are alleged to have violated;

4. Civil penalties according to proof against Defendants pursuant to California Fish and Game Code section 1600 *et seq.*, in an amount no less than TWO MILLION DOLLARS (\$2,000,000.00);

5. Civil penalties according to proof against Defendants pursuant to California Fish and Game Code section 5650 *et seq.*, in an amount no less than TWO MILLION DOLLARS (\$2,000,000.00);

6. Civil liability according to proof against Defendant pursuant to California Water Code section 13000 *et seq.*, in an amount no less than TWO MILLION DOLLARS (\$2,000,000.00);

7. Civil penalties according to proof against Defendants pursuant to California Business and Professions Code section 17206 for each act of unfair competition engaged in by Defendants in an amount no less than TWO MILLION DOLLARS (\$2,000,000.00);

1 8. For natural resource damages according to proof for harm caused by the Defendants  
2 violations, in an amount no less than ONE MILLION DOLLARS (\$1,000,000.00). (Fish & G.  
3 Code, § 12016, subd. (a).)

4 9. For "all costs incurred by the [D]epartment arising from the administration and  
5 enforcement of applicable pollution laws," namely Fish and Game Code section 5650. (Fish &  
6 G. Code, § 13013, subd. (c).) These costs include, but are not limited to, costs of investigation  
7 and expert witness fees.

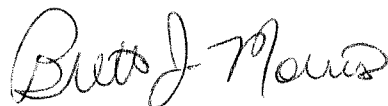
8 10. For all costs of investigating and prosecuting this action, including but not limited to  
9 expert fees and reasonable attorneys' fees, pursuant to Code of Civil Procedure section 1021.8.

10 11. For any and all other costs incurred in this lawsuit.

11  
12 RESPECTFULLY REQUESTED:

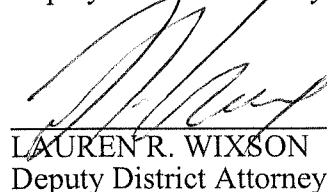
13  
14 Dated: 1/9/08

EDMUND G. BROWN JR., Attorney General  
of the State of California  
TOM GREENE  
Chief Assistant Attorney General  
BRETT J. MORRIS  
ROBERT W. BYRNE  
Deputy Attorneys General

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23 People of the State of California

24 ROBERT J. KOCHLY  
25 District Attorney of the County of Contra Costa  
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Attorneys for Plaintiff, People of the State of  
California

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF CONTRA COSTA**

**PEOPLE OF THE STATE OF CALIFORNIA,  
and PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. the REGIONAL  
WATER QUALITY CONTROL BOARD,  
CENTRAL VALLEY REGION,**

Plaintiffs,

v.

**ALBERT D. SEENO CONSTRUCTION CO.,  
a California limited partnership, and DOES 1  
through 10, inclusive,**

Defendant.

Exempt from fees pursuant to  
Government Code Section 6103

2008 JAN -9 P 12: 24

K. TORRE, CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CALIF.

By: D. Wagner, Deputy Clerk

Case No. **C08 00071**

**NOTICE OF MOTION AND  
MOTION BY PLAINTIFFS FOR  
ENTRY OF PERMANENT  
INJUNCTION AND FINAL  
JUDGMENT**

Hearing Date: 2/27/08

Hearing Time: 9:00 AM

Department: 2

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2  
3 **PLEASE TAKE NOTICE THAT ON** 2/27/08, at 9:00 A.m. or as soon thereafter  
4 as the matter can be heard, in Department 2 of the above-entitled court, located at 725 COURT  
5 Street, Martinez, California 94553, Plaintiffs, PEOPLE OF THE STATE OF CALIFORNIA,  
6 shall move, and hereby does move, the Court for an order entering a Permanent Injunction and  
7 Final Judgment ("Final Judgment") in this matter. The proposed Final Judgment is lodged  
8 simultaneously with this motion.

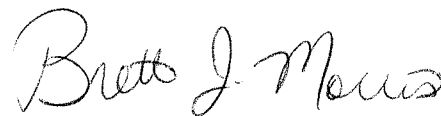
9 This motion is unopposed by the Defendant. The Parties in this action agree that the  
10 entry of the Final Judgment is appropriate, and have entered into a Stipulation For Entry of Final  
11 Judgment.

12 The Court is requested to find that this proposed resolution is fair and in the public  
13 interest. This motion is based on this Notice of Motion and Motion, the Stipulation for Entry of  
14 Final Judgment, the proposed Permanent Injunction and Final Judgment, the Memorandum of  
15 Points And Authorities in Support of Plaintiff's Motion For Entry of Permanent Injunction and  
16 Final Judgment, and any oral argument that the Court may wish to entertain.

17  
18 **RESPECTFULLY SUBMITTED:**

19  
20 Dated: 1/9/08

EDMUND G. BROWN JR., Attorney General  
of the State of California  
JANET GAARD  
Acting Chief Assistant Attorney General  
THEODORA P. BERGER  
Senior Assistant Attorney General

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26 BRETT J. MORRIS  
27 Deputy Attorney General  
28 Attorneys for Plaintiffs  
People of the State of California

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES IN**  
2                                   **SUPPORT OF PLAINTIFFS' MOTION FOR ENTRY OF**  
3                                   **PERMANENT INJUNCTION AND FINAL JUDGMENT**

4           The Plaintiffs' Motion for Entry of Permanent Injunction and Final Judgment seeks the  
5 Court's approval of a Permanent Injunction and Final Judgment ("Final Judgment") proposed by  
6 the Parties upon reaching and executing a Stipulation for Entry of Final Judgment ("Stipulation"),  
7 which would resolve the matters alleged in the Complaint filed in this action. The proposed Final  
8 Judgment has been lodged with the Court simultaneously with the filing of the Complaint.

9           The Plaintiffs are the People of the State of California ("People"), as represented by  
10 Edmund G. Brown Jr., Attorney General of the State of California, along with Robert J. Kochly,  
11 District Attorney of Contra Costa County, and the People of The State of California *ex rel.* the  
12 Regional Water Quality Control Board, Central Valley Region. The Defendant is Albert D. Seeno  
13 Construction Co., a California limited partnership, represented by its attorney William M.  
14 Goodman. The proposed resolution of this action is the result of good-faith, arms-length  
15 negotiations between the Plaintiffs and the Defendant. The Court is requested to find that the  
16 resolution and the entry of the Final Judgment is fair and in the public interest.

17  
18                                   **INTRODUCTION**

19           The case against the Defendant is based on investigations in the State of California related  
20 to stream alteration laws and water pollution statutes. The proposed Final Judgment would  
21 resolve the alleged violations against Defendant that occurred at Defendant's development project  
22 know as Mira Vista, in Antioch, California. With regard to the monetary payments to which  
23 Defendant will be obligated under the Final Judgment, the actual disbursement of funds has been  
24 structured so that statutory civil liability payments, costs of enforcement, and supplemental  
25 environmental projects will be distributed to the prosecuting offices and local regulatory agencies  
26 that assisted in the investigation of the case. Moreover, Defendant is obligated to adopt and  
27 implement several additional environmental commitments and training programs for its  
28 employees within the State of California.

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1 i. Five Hundred Thousand Dollars (\$500,000.00), and any  
2 interest derived therefrom, in statutory civil liability pursuant to Water Code sections 13268 and  
3 13385, shall be made payable to the State Water Resources Control Board, Cleanup and  
4 Abatement Account. This separate statutory civil liability payment shall be placed in a fund  
5 administered by the State Water Resources Control Board pursuant to Water Code sections 13340  
6 and 13341. This separate statutory civil liability payment shall be delivered to the Office of the  
7 California Attorney General within ten (10) days of issuance and entry of the Final Judgment.

8 ii. Five Hundred Thousand Dollars (\$500,000.00), and any  
9 interest derived therefrom, as statutory civil liability pursuant to Fish and Game Code sections  
10 1615 and 5650.1, shall be paid by Defendant in two separate payments - the first portion of this  
11 payment of statutory civil liability shall be made in the total of Two Hundred and Fifty Thousand  
12 Dollars (\$250,000.00) and shall be made payable to the California Department of Fish and Game -  
13 Fish and Game Preservation Fund, which shall be deposited and expended pursuant to Fish and  
14 Game Code section 13000 *et seq.*; the second portion of this payment of statutory civil liability  
15 shall be made in the total of Two Hundred and Fifty Thousand Dollars (\$250,000.00) and shall be  
16 made payable to the Contra Costa County Treasurer, to be deposited in the Contra Costa County  
17 Fish and Wildlife Propagation Fund for expenditure pursuant to Fish and Game Code section  
18 13100 *et seq.* These two separate statutory civil liability payments shall be delivered to the Office  
19 of the Contra Costa County District Attorney within ten (10) days of issuance and entry of the  
20 Final Judgment.

21 iii. Two Hundred and Fifty Thousand Dollars (\$250,000.00),  
22 and any interest derived therefrom, in statutory civil liability pursuant to Business and Professions  
23 Code section 17206, shall be placed in a fund administered by the California Department of  
24 Justice and shall be used by the Public Rights Division of the Attorney General's Office, until all  
25 funds are exhausted, for any of the following purposes: (1) implementation of the Attorney  
26 General's authority to protect the environment and natural resources of the State pursuant to  
27 Government Code section 12600 *et seq.* and as Chief Law Officer of the State of California  
28 pursuant to Cal. Const., Art. V., §13; (2) implementation of the California Environmental Quality

1 Act; (3) enforcement of the Safe Drinking Water and Toxic Enforcement Act of 1986; and (4)  
2 other environmental enforcement actions which benefit the State of California and its citizens as  
3 determined by the Attorney General. Such funding may be used for the costs of the Attorney  
4 General's investigation, filing fees and other court costs, payment to expert witnesses and  
5 technical consultants, purchase of equipment, laboratory analyses, personnel costs, travel costs,  
6 and other costs necessary to pursue the investigation, prosecution, or enforcement of  
7 environmental actions investigated or initiated by the Attorney General for the benefit of the State  
8 of California and its citizens. The statutory monetary payments referred to in this subdivision, and  
9 any interest derived therefrom shall solely and exclusively augment the budget of the Attorney  
10 General's Office as it pertains to the Environment Section of the Public Rights Division and in no  
11 manner shall supplant or cause any reduction of any portion of the Attorney General's budget.  
12 This separate civil liability payment shall be delivered to the Office of the California Attorney  
13 General within ten (10) days of issuance and entry of the Final Judgment.

14 iv. Two Hundred and Fifty Thousand Dollars (\$250,000.00),  
15 and any interest derived therefrom, as statutory civil liability pursuant to Business and Professions  
16 Code section 17206, and shall be made payable to the Contra Costa County Treasurer. This  
17 separate statutory civil liability payment shall be delivered to the Office of the Contra Costa  
18 County District Attorney within ten (10) days of issuance and entry of the Final Judgment.

19 b. Restitutionary Obligations: For the recovery as mitigation and  
20 replacement of environmental harm and losses caused to the watercourse features on Defendant's  
21 property and associated habitat and environment values, Defendant shall be liable to and agrees to  
22 pay or convey the following:

23 i. A 60-acre parcel in Antioch, California, more particularly  
24 described in Exhibit A attached to this Stipulation (the "60 Acre Parcel"), in Fee title granted to  
25 the East Bay Regional Park District, together with an access easement (the "Easement") in the  
26 form and across real property set out and described in Exhibit B attached to this Stipulation.

27 ///

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1 Defendant and all affiliated persons and entities bound by this Stipulation and the Final Judgment  
2 shall take all steps necessary to convey the 60 Acre Parcel and the Easement to East Bay Regional  
3 Park District, in the following manner:

4                                   A.     Escrow: Upon or before issuance and entry of the  
5 Permanent Injunction and Final Judgment, Defendant and East Bay Regional Park District shall  
6 open an escrow with Old Republic Title Insurance Company, Fairfield, California, Office, and  
7 deposit therein a validly executed Grant Deed in the form attached hereto as Exhibit A, and a  
8 Grant of Easement in the form attached hereto as Exhibit B, which shall both then be validly  
9 executed by East Bay Regional Park District. Defendant shall also deposit and pay all costs of  
10 escrow and any other closing costs, including any applicable recording fees and transfer tax.  
11 Escrow shall close within ten (10) days of the issuance and entry of the Permanent Injunction and  
12 Final Judgment.

13                                   B.     Title Insurance: East Bay Regional Park District  
14 shall pay the premium for any desired title insurance, insuring title to the 60 Acre Parcel and the  
15 Easement in East Bay Regional Park District, subject to all encumbrances then of record.

16                                   C.     Endowment: The sum of Fifty Thousand Dollars  
17 (\$50,000.00) shall be paid by Defendant to the East Bay Regional Park District for use by the East  
18 Bay Regional Park District on the 60 Acre Parcel and the Easement solely for endowment  
19 purposes, including fencing, gates, repairs, replacement, road maintenance, and other habitat  
20 conservation purposes and protection activities on the 60 Acre Parcel and the Easement.

21                                   ii.     One Million, One Hundred and Seventy-Five Thousand  
22 Dollars (\$1,175,000.00), shall be paid to the California Wildlife Foundation, a non-profit  
23 corporation, which shall be held in trust for the East Contra Costa County Habitat Conservancy, to  
24 be used by the East Contra Costa County Habitat Conservancy for the purpose of land and habitat  
25 acquisition, habitat restoration of those lands, or enhancement, conservation, protection, and  
26 maintenance of habitat lands that support creek or watercourse features in East Contra Costa  
27 County. This separate restitution payment shall be made payable to the California Wildlife

28 ///

Foundation, and shall be delivered to the Office of the Contra Costa County District Attorney within ten (10) days of issuance and entry of the Final Judgment.

c. Supplemental Environmental Projects: One Hundred and Twenty-Five Thousand Dollars (\$125,000.00), under the doctrine of *cy pres* restitution due to the impossibility of identifying direct damages to the resources of the State of California, shall be paid to "American Rivers" to be used to complete construction of a fish ladder for enhanced environmental restoration and creek improvements on Marsh Creek. These funds shall be expended only for use in constructing a fish ladder at the Marsh Creek drop structure in Brentwood, in order to benefit Chinook salmon and anadromous steelhead of Contra Costa County. On June 30, 2008, and every six months thereafter, American Rivers shall provide a report to the Office of the Attorney General detailing the work performed to date on the project, the expenditure of these funds towards the project, and the work expected to be conducted in the next six months. At the completion of the project, American Rivers shall provide a report to the Office of the Attorney General to account for the use of these funds on the project.

d. Costs of Investigation and Enforcement: One Hundred Thousand Dollars (\$100,000.00), as reimbursement for partial recovery of investigative costs and attorneys' fees in this matter, to be disbursed as follows:

i. Fifty Thousand Dollars (\$50,000.00), made payable to the California Department of Fish and Game - Fish and Wildlife Pollution Account, which shall be delivered to the Office of the California Attorney General within ten (10) days of issuance and entry of the Final Judgment. This payment satisfies all claims of the Department of Fish and Game pursuant to Fish and Game Code section 13013.

ii. Forty Thousand Dollars (\$40,000.00), made payable to the State Water Resources Control Board, Cleanup and Abatement Account, which shall be delivered to the Office of the California Attorney General within ten (10) days of issuance and entry of the Final Judgment.

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1                               iii.     Five Thousand Dollars (\$5,000.00), made payable to the  
2 Office of the California Attorney General, which shall be delivered to the Office of the California  
3 Attorney General within ten (10) days of issuance and entry of the Final Judgment.

4                               iv.     Five Thousand Dollars (\$5,000.00), made payable to the  
5 Office of the Contra Costa County District Attorney, which shall be delivered to the Office of the  
6 Contra Costa County District Attorney within ten (10) days of issuance and entry of the Final  
7 Judgment.

8               **2.     Permanent Injunctive Relief:**

9               Pursuant to provisions of Fish and Game Code sections 1615 and 5650.1, Water Code  
10 sections 13304 and 13385, Business and Professions Code section 17203, and the Court's  
11 equitable powers, Defendant will be permanently enjoined committing any violations of the  
12 California Fish and Game Code; any violations of the California Water Code, including the  
13 Porter-Cologne Act; any violations of the federal and California Endangered Species Act; any  
14 violations of the federal Clean Water Act; or any violations of the California Business and  
15 Professions Code. In addition, Defendant will be required under the mandatory provisions of the  
16 Permanent Injunction to establish and implement instructional and educational courses for  
17 employees who are involved in land development processing and permitting; to conduct and  
18 report on biological assessments or evaluations of certain identified properties in the state of  
19 California; and provide certification of completion of instructional training.

20               **3.     Scope of the Settlement:**

21               The scope of the settlement provided by the Final Judgment follows the regular practice of  
22 the Attorney General's Office regarding environmental enforcement matters as alleged in the  
23 Complaint. Settlement of all claims that have been alleged, or claims that could have been  
24 asserted within the scope of the allegations set forth, in the Complaint, are matters to be covered  
25 by the entry of this Final Judgment.

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1       The proposed resolution in this case also is not subject to other standards of review that  
2 apply in tort cases or class actions. Because the resolution does not discharge any liability for  
3 contribution, the requirement of a "good faith" determination pursuant to Code of Civil Procedure  
4 section 877.6 does not apply.<sup>1</sup> Nor is this a class action in which individual persons will lose  
5 their personal claims, which would necessitate a determination, on behalf of the absent class  
6 members, that the settlement is "fair, reasonable and adequate." To the contrary, an action under  
7 section 17200 and, by analogy, an action under the Fish and Game Code, is "fundamentally a law  
8 enforcement action designed to protect the public and not to benefit private parties," and therefore  
9 is not subject to the procedural requirements of class actions. (*People v. Pacific Land Research*  
10 *Co.* (1977) 20 Cal.3d 10, 17.)

11       **II.       The Final Judgment Obtains a Beneficial Resolution of Disputed Issues and Avoids**  
12       **Prolonged Litigation**

13       Because the litigation process "is fraught with complexities, uncertainties, delays, and  
14 risks of many kinds[,]" public policy in California favors settlement. (*Neary v. Regents of*  
15 *University of California* (1992) 3 Cal.4th 273, 280.) In this case, the People would have to  
16 demonstrate violations of the applicable requirements over the past 4 years as identified in the  
17 Complaint. Moreover, the People would have to provide rationales for penalty. Because the  
18 People's legal and factual bases for imposing civil liability may be disputed by the Defendant,  
19 litigating this case will be time consuming, complex, and may involve a significant delay in  
20 obtaining any resolution. The Final Judgment resolves these issues by assessing a set amount of  
21 statutory civil liability, providing for reimbursement of the People's costs of investigation and  
22 enforcement, providing funds for a number of programs with mitigating and environmental  
23 benefits, requiring Defendant to enhance its environmental compliance program, and addressing  
24 injunctive responsibilities of Defendant related to compliance with many environmental statutory  
25 schemes.

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26  
27       1. That section applies only where the Complaint alleges that the defendants are "joint tortfeasors  
28 or co-obligors on a contract debt" and approval of the settlement discharges the settling defendant  
from liability for contribution.

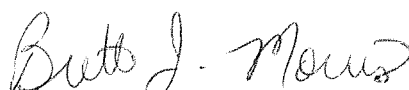
**CONCLUSION**

For the foregoing reasons, the People respectfully request that the Court approve and enter the Final Judgment.

**RESPECTFULLY SUBMITTED:**

Dated: 1/9/08

EDMUND G. BROWN JR., Attorney General  
of the State of California  
JANET GAARD  
Acting Chief Assistant Attorney General

  
\_\_\_\_\_  
BRETT J. MORRIS  
Deputy Attorney General  
Attorneys for Plaintiff  
People of the State of California

1 EDMUND G. BROWN JR., Attorney General  
of the State of California

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Acting Chief Assistant Attorney General

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7 Attorneys for Plaintiff, People of the State of  
8 California; and, Plaintiff, People of the State of  
California, ex rel., the Regional Water Quality Control  
9 Board, Central Valley Region

10  
11 ROBERT J. KOCHLY, District Attorney  
County of Contra Costa

12 LAUREN R. WIXSON, SBN 117178

Deputy District Attorney

13 627 Ferry Street

Martinez, CA 94553-0125

14 Telephone: (925) 646-4532

Facsimile: (925) 646-4683

15 Attorneys for Plaintiff, People of the State of  
16 California

17  
18 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **IN AND FOR THE COUNTY OF CONTRA COSTA**

20 **PEOPLE OF THE STATE OF CALIFORNIA,**  
21 **and PEOPLE OF THE STATE OF**  
22 **CALIFORNIA, *ex rel.* the REGIONAL**  
23 **WATER QUALITY CONTROL BOARD,**  
24 **CENTRAL VALLEY REGION,**

Plaintiffs,

25 **v.**

26 **ALBERT D. SEENO CONSTRUCTION CO.,**  
27 **a California limited partnership, and DOES 1**  
28 **through 10, inclusive,**

Defendant.

Exempt from fees pursuant to  
Government Code Section 6103

FILED  
2008 JAN -9 P 12:23

K. TORRE, CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CALIF.

BY: D. Wright, Deputy Clerk

Case No. **C08 00071**

**STIPULATION FOR ENTRY OF  
PERMANENT INJUNCTION AND  
FINAL JUDGMENT  
(Section 664.6, C.C.P.)**

1 Plaintiffs, PEOPLE OF THE STATE OF CALIFORNIA and PEOPLE OF THE STATE  
2 OF CALIFORNIA *ex rel.* the REGIONAL WATER QUALITY CONTROL BOARD,  
3 CENTRAL VALLEY REGION, by and through EDMUND G. BROWN JR., Attorney General  
4 of the State of California, BRETT J. MORRIS and ROBERT W. BYRNE, Deputy Attorneys  
5 General, and ROBERT J. KOCHLY, District Attorney of Contra Costa County, LAUREN R.  
6 WIXSON, Deputy District Attorney, and Defendant ALBERT D. SEENO CONSTRUCTION  
7 CO., a California limited partnership, by and through its attorney WILLIAM M. GOODMAN,  
8 Kasowitz, Benson, Torres & Friedman (collectively, the "Parties"), hereby stipulate and agree to  
9 the terms of this STIPULATION FOR ENTRY OF FINAL JUDGMENT ("Stipulation").

10 This Stipulation will be attached to the PERMANENT INJUNCTION AND FINAL  
11 JUDGMENT ("Final Judgment") in this action, and will be incorporated and made a part of the  
12 Final Judgment. The Parties hereby consent to the signing of the proposed Final Judgment by the  
13 Court, to which this Stipulation is attached as Exhibit A, and to its filing and entry, and the  
14 Parties are familiar with its terms.

15 **1. INTRODUCTION**

16 On April 14, 2006, the California Regional Water Quality Control Board, Central Valley  
17 Region, issued a Notice of Violation (the "Notice of Violation") to Seeno Homes, an entity  
18 thought to be an entity related to the Defendant. In this action, Plaintiffs filed a civil complaint  
19 (the "Complaint") in Contra Costa County Superior Court against Defendant alleging that  
20 Defendant violated provisions of California laws governing Streambed Alteration (Fish and  
21 Game Code section 1600 *et seq.*), California laws governing Water Pollution (Fish and Game  
22 Code section 5650 *et seq.*), the California Porter-Cologne Water Quality Control Act (Water  
23 Code section 13000 *et seq.*) ("Porter-Cologne Act"), and California's Unfair Competition Laws  
24 (Business and Professions Code sections 17200 *et seq.*). Plaintiffs believe that the resolution of  
25 the violations alleged in the Complaint as set forth in this Stipulation and in the Final Judgment  
26 is fair and reasonable and fulfills Plaintiffs' enforcement objectives, that no further action is  
27 warranted concerning the specific alleged violations in the Complaint except as provided  
28 pursuant to the Final Judgment.



1 Defendant also believes that the resolution set forth in this Stipulation and in the Final  
2 Judgment is fair and reasonable under the circumstances. Without any admission of liability,  
3 Defendant accepts this Stipulation and Final Judgment as a compromise of disputed claims to  
4 avoid litigation expense and uncertainty.

5 **2. JURISDICTION**

6 The Superior Court of California, County of Contra Costa, has subject matter jurisdiction  
7 over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation  
8 and Final Judgment.

9 **3. DEFINITIONS**

10 All terms used in this Stipulation that are defined in the Water Code, including but not  
11 limited to section 13050, shall have the meaning set forth in that statute.

12 "Entry of the Final Judgment" means entry of the proposed Permanent Injunction and  
13 Final Judgment as a judgment ordered and entered by this Court.

14 "Regional Water Board" means the California Regional Water Quality Control Board,  
15 Central Valley Region and/or the Regional Water Board's staff. The Regional Water Board is a  
16 public agency of the State of California organized and existing under section 13200 of the Water  
17 Code. The Regional Water Board is responsible for water quality control, including the  
18 prevention and abatement of water pollution and nuisance through enforcement of the Porter-  
19 Cologne Act.

20 **4. SETTLEMENT OF DISPUTED CLAIMS**

21 The Parties have stipulated to the entry of the Final Judgment pursuant to a  
22 compromise and settlement of disputed claims asserted in the Complaint for the purpose of  
23 furthering the public interest. Defendant waives its right to a hearing on any claims, violations or  
24 causes of action alleged in the Complaint and arising prior to the entry of the Final Judgment as a  
25 judgment ordered and entered by this Court.

26 **5. SETTLEMENT PAYMENTS AND MONETARY LIABILITY**

27 **5.1 Allocations:** Defendant agrees to convey a sixty acre parcel and access  
28 easement, as further described below, and further agrees to pay a total of Two Million, Nine

1 Hundred Fifty Thousand Dollars (\$2,950,000.00). All payments shall be made within ten (10)  
2 days of issuance and entry of the Permanent Injunction and Final Judgment. The payments shall  
3 be allocated as follows:

4 a. Statutory Civil Liability: One Million, Five Hundred Thousand  
5 Dollars (\$1,500,000.00) shall be paid by Defendant, to be disbursed as follows:

6 i. Five Hundred Thousand Dollars (\$500,000.00), and any  
7 interest derived therefrom, in statutory civil liability pursuant to Water Code sections 13268 and  
8 13385, shall be made payable to the State Water Resources Control Board, Cleanup and  
9 Abatement Account. This separate statutory civil liability payment shall be placed in a fund  
10 administered by the State Water Resources Control Board pursuant to Water Code sections  
11 13340 and 13341. This separate statutory civil liability payment shall be delivered to the Office  
12 of the California Attorney General within ten (10) days of issuance and entry of the Final  
13 Judgment.

14 ii. Five Hundred Thousand Dollars (\$500,000.00), and any  
15 interest derived therefrom, as statutory civil liability pursuant to Fish and Game Code sections  
16 1615 and 5650.1, shall be paid by Defendant in two separate payments - the first portion of this  
17 payment of statutory civil liability shall be made in the total of Two Hundred and Fifty Thousand  
18 Dollars (\$250,000.00) and shall be made payable to the California Department of Fish and Game  
19 - Fish and Game Preservation Fund, which shall be deposited and expended pursuant to Fish and  
20 Game Code section 13000 *et seq.*; the second portion of this payment of statutory civil liability  
21 shall be made in the total of Two Hundred and Fifty Thousand Dollars (\$250,000.00) and shall  
22 be made payable to the Contra Costa County Treasurer, to be deposited in the Contra Costa  
23 County Fish and Wildlife Propagation Fund for expenditure pursuant to Fish and Game Code  
24 section 13100 *et seq.* These two separate statutory civil liability payments shall be delivered to  
25 the Office of the Contra Costa County District Attorney within ten (10) days of issuance and  
26 entry of the Final Judgment.

27 iii. Two Hundred and Fifty Thousand Dollars (\$250,000.00),  
28 and any interest derived therefrom, in statutory civil liability pursuant to Business and

1 Professions Code section 17206, shall be placed in a fund administered by the California  
2 Department of Justice and shall be used by the Public Rights Division of the Attorney General's  
3 Office, until all funds are exhausted, for any of the following purposes: (1) implementation of the  
4 Attorney General's authority to protect the environment and natural resources of the State  
5 pursuant to Government Code section 12600 *et seq.* and as Chief Law Officer of the State of  
6 California pursuant to Cal. Const., Art. V., §13; (2) implementation of the California  
7 Environmental Quality Act; (3) enforcement of the Safe Drinking Water and Toxic Enforcement  
8 Act of 1986; and (4) other environmental enforcement actions which benefit the State of  
9 California and its citizens as determined by the Attorney General. Such funding may be used for  
10 the costs of the Attorney General's investigation, filing fees and other court costs, payment to  
11 expert witnesses and technical consultants, purchase of equipment, laboratory analyses,  
12 personnel costs, travel costs, and other costs necessary to pursue the investigation, prosecution,  
13 or enforcement of environmental actions investigated or initiated by the Attorney General for the  
14 benefit of the State of California and its citizens. The statutory monetary payments referred to in  
15 this subdivision, and any interest derived therefrom shall solely and exclusively augment the  
16 budget of the Attorney General's Office as it pertains to the Environment Section of the Public  
17 Rights Division and in no manner shall supplant or cause any reduction of any portion of the  
18 Attorney General's budget. This separate civil liability payment shall be delivered to the Office  
19 of the California Attorney General within ten (10) days of issuance and entry of the Final  
20 Judgment.

21 iv. Two Hundred and Fifty Thousand Dollars (\$250,000.00),  
22 and any interest derived therefrom, as statutory civil liability pursuant to Business and  
23 Professions Code section 17206, and shall be made payable to the Contra Costa County  
24 Treasurer. This separate statutory civil liability payment shall be delivered to the Office of the  
25 Contra Costa County District Attorney within ten (10) days of issuance and entry of the Final  
26 Judgment.

27 b. Restitutionary Obligations: For the recovery as mitigation and  
28 replacement of environmental harm and losses caused to the watercourse features on Defendant's

1 property and associated habitat and environment values, Defendant shall be liable to and agrees  
2 to pay or convey the following:

3 i. A 60-acre parcel in Antioch, California, more particularly  
4 described in Exhibit A attached to this Stipulation (the "60 Acre Parcel"), in Fee title granted to  
5 the East Bay Regional Park District, together with an access easement (the "Easement") in the  
6 form and across real property set out and described in Exhibit B attached to this Stipulation.  
7 Defendant and all affiliated persons and entities bound by this Stipulation and the Final Judgment  
8 shall take all steps necessary to convey the 60 Acre Parcel and the Easement to East Bay  
9 Regional Park District, in the following manner:

10 A. Escrow: Upon or before issuance and entry of the  
11 Permanent Injunction and Final Judgment, Defendant and East Bay Regional Park District shall  
12 open an escrow with Old Republic Title Insurance Company, Fairfield, California, Office, and  
13 deposit therein a validly executed Grant Deed in the form attached hereto as Exhibit A, and a  
14 Grant of Easement in the form attached hereto as Exhibit B, which shall both then be validly  
15 executed by East Bay Regional Park District. Defendant shall also deposit and pay all costs of  
16 escrow and any other closing costs, including any applicable recording fees and transfer tax.  
17 Escrow shall close within ten (10) days of the issuance and entry of the Permanent Injunction and  
18 Final Judgment.

19 B. Title Insurance: East Bay Regional Park District  
20 shall pay the premium for any desired title insurance, insuring title to the 60 Acre Parcel and the  
21 Easement in East Bay Regional Park District, subject to all encumbrances then of record.

22 C. Endowment: The sum of Fifty Thousand Dollars  
23 (\$50,000.00) shall be paid by Defendant to the East Bay Regional Park District for use by the  
24 East Bay Regional Park District on the 60 Acre Parcel and the Easement solely for endowment  
25 purposes, including fencing, gates, repairs, replacement, road maintenance, and other habitat  
26 conservation purposes and protection activities on the 60 Acre Parcel and the Easement.

27 ii. One Million, One Hundred and Seventy-Five Thousand  
28 Dollars (\$1,175,000.00), shall be paid to the California Wildlife Foundation, a non-profit

1 corporation, which shall be held in trust for the East Contra Costa County Habitat Conservancy,  
2 to be used by the East Contra Costa County Habitat Conservancy for the purpose of land and  
3 habitat acquisition, habitat restoration of those lands, or enhancement, conservation, protection,  
4 and maintenance of habitat lands that support creek or watercourse features in East Contra Costa  
5 County. This separate restitution payment shall be made payable to the California Wildlife  
6 Foundation, and shall be delivered to the Office of the Contra Costa County District Attorney  
7 within ten (10) days of issuance and entry of the Final Judgment.

8 c. Supplemental Environmental Projects: One Hundred and Twenty-  
9 Five Thousand Dollars (\$125,000.00), under the doctrine of *cy pres* restitution due to the  
10 impossibility of identifying direct damages to the resources of the State of California, shall be  
11 paid to "American Rivers" to be used to complete construction of a fish ladder for enhanced  
12 environmental restoration and creek improvements on Marsh Creek. These funds shall be  
13 expended only for use in constructing a fish ladder at the Marsh Creek drop structure in  
14 Brentwood, in order to benefit Chinook salmon and anadromous steelhead of Contra Costa  
15 County. On June 30, 2008, and every six months thereafter, American Rivers shall provide a  
16 report to the Office of the Attorney General detailing the work performed to date on the project,  
17 the expenditure of these funds towards the project, and the work expected to be conducted in the  
18 next six months. At the completion of the project, American Rivers shall provide a report to the  
19 Office of the Attorney General to account for the use of these funds on the project.

20 d. Costs of Investigation and Enforcement: One Hundred Thousand  
21 Dollars (\$100,000.00), as reimbursement for partial recovery of investigative costs and attorneys'  
22 fees in this matter, to be disbursed as follows:

23 i. Fifty Thousand Dollars (\$50,000.00), made payable to the  
24 California Department of Fish and Game - Fish and Wildlife Pollution Account, which shall be  
25 delivered to the Office of the California Attorney General within ten (10) days of issuance and  
26 entry of the Final Judgment. This payment satisfies all claims of the Department of Fish and  
27 Game pursuant to Fish and Game Code section 13013.

28 ///

1                                   ii.     Forty Thousand Dollars (\$40,000.00), made payable to the  
2 State Water Resources Control Board, Cleanup and Abatement Account, which shall be  
3 delivered to the Office of the California Attorney General within ten (10) days of issuance and  
4 entry of the Final Judgment.

5                                   iii.     Five Thousand Dollars (\$5,000.00), made payable to the  
6 Office of the California Attorney General, which shall be delivered to the Office of the California  
7 Attorney General within ten (10) days of issuance and entry of the Final Judgment.

8                                   iv.     Five Thousand Dollars (\$5,000.00), made payable to the  
9 Office of the Contra Costa County District Attorney, which shall be delivered to the Office of the  
10 Contra Costa County District Attorney within ten (10) days of issuance and entry of the Final  
11 Judgment.

12                   **5.2     Payment Procedures:** The payments imposed on Defendant pursuant to  
13 Paragraph 5.1 shall be made by certified or cashier's checks or wire transfer. All payments made  
14 by check shall be delivered to the named Party. In the alternative, payments may be made by  
15 wire transfer and such transfers shall be electronically transmitted to an account and routing  
16 number as directed in writing by the Party to Defendant prior to the entry of the Final Judgment.

17                   **5.3     Payment Verification:** A photocopy of all payments made by Defendant  
18 pursuant to Paragraph 5.1 (or electronic confirmation of the wire transfer) shall be sent, at the  
19 same time that they are delivered or transferred for payment, to each Party's representative.

20           **6.     PERMANENT INJUNCTION**

21                   **6.1     Application:** The injunctive provisions contained in this Stipulation and  
22 in the Permanent Injunction are applicable to Defendant Albert D. Seeno Construction Co., a  
23 California limited partnership, its affiliated companies and entities, including Albert D. Seeno  
24 Construction Co., Inc., its managing partner, and all other related entities and their owners,  
25 partners, officers, employees, subsidiary corporations, or other entities acting by, through, under,  
26 or on behalf of Defendant Albert D. Seeno Construction Co., with actual or constructive  
27 knowledge of this Stipulation and of the Permanent Injunction and Final Judgment (collectively,  
28 "Enjoined Parties"). Any violation of the Permanent Injunction required by this Stipulation and

1 the Final Judgment shall be considered separate and in addition to any violation of California  
2 statutory or regulatory requirements.

3                   **6.2 Prohibitory Terms:** Pursuant to provisions of Fish and Game Code  
4 sections 1615 and 5650.1, Water Code sections 13304 and 13385, and Business and Professions  
5 Code section 17203, and the Court's equitable powers, the Enjoined Parties agree to be  
6 permanently enjoined from:

- 7                   a. Committing any violations of the California Fish and Game Code;
- 8                   b. Committing any violations of the California Water Code, including the  
9 Porter-Cologne Act;
- 10                  c. Committing any violations of the federal and California Endangered  
11 Species Act;
- 12                  d. Committing any violations of the federal Clean Water Act;
- 13                  e. Committing any violations of the California Business and Professions  
14 Code.

15                   **6.3 Mandatory Terms:**

16                   a. Instructional Program for Training

17                   Defendant Albert D. Seeno Construction Co. shall designate an appropriate  
18 supervisory employee, with requisite environmental training and experience, who shall be  
19 responsible for coordinating and performing with trained and experienced qualified professionals  
20 and consultants, to establish instructional and educational courses for the Enjoined Parties and  
21 their employees who are involved in land development processing and permitting. The  
22 instructional program required herein shall be conducted for a five (5) year period commencing  
23 in 2007. Defendant Albert D. Seeno Construction Co. shall implement courses of instruction for  
24 the Enjoined Parties and their employees to explain the legal requirements relating to  
25 environmental, water quality, wetlands, and habitat conservation and protection, and shall  
26 instruct the employees in the appropriate methods for compliance with such requirements.  
27 Defendant Albert D. Seeno Construction Co. shall devise and implement instructional courses  
28 with trained and experienced professionals and consultants in the following areas:

1 i. CEQA: California Environmental Quality Act (“CEQA”)  
2 comprehension and the methods of assuring compliance with CEQA and with appropriate  
3 mitigation measures derived and imposed as a part of project approval.

4 ii. Clean Water Act: Permitting requirements under the Clean Water  
5 Act and methods by which Section 404 and other federal permits can be applied for and obtained  
6 from the U.S. Army Corps of Engineers. This course of instruction shall include an explanation  
7 of the process of wetland delineations and the interface between wetland determination and  
8 mitigation and project approval.

9 iii. Porter-Cologne Act: The requirements of the Porter-Cologne Act  
10 and other requirements of the State Water Quality Control Board including issuance of Section  
11 401 certifications and issuance of waste discharge permits for waters of the state. In compiling  
12 the instructional program on this subject, Defendant Albert D. Seenoo Construction Co. shall  
13 obtain instructional materials from the Regional Water Quality Control Board that it may have  
14 available to include in the program.

15 iv. Endangered Species Acts: Requirements of the Endangered  
16 Species Act shall be explained in the context of development approvals and the process for  
17 mitigating and avoiding impacts shall be fully and completely explained so that any Enjoined  
18 Parties are aware of the appropriate methods for determining and mitigating any impacts and  
19 avoiding “takes” of endangered species.

20 v. Fish and Game Requirements: Requirements of the State of  
21 California Department of Fish and Game shall be the subject of another program and  
22 instructional materials shall be provided explaining how compliance can be obtained.  
23 Discussions of the applicability of streambed alteration agreements under the authority of Fish  
24 and Game Code section 1600 *et seq.*, biological assessments and appropriate onsite and offsite  
25 mitigation measures shall be put in the context of habitat impact mitigation and project approval.  
26 Defendant Albert D. Seenoo Construction Co. shall, in compiling this program, obtain any  
27 educational or other materials from the State Department of Fish and Game that might be  
28 ///



1 available for distribution to employees who may be involved in the process of obtaining  
2 agreements pursuant to Fish and Game Code section 1600 *et seq.*

3 vi. Instructional Process: These five (5) separate subjects may be  
4 combined in courses of instruction and shall be conducted at Defendant Albert D. Seen  
5 Construction Co.'s head office or such other location as may be convenient. The courses shall be  
6 completed by the end of July, 2008. All Enjoined Parties shall be required to attend the courses  
7 and encouraged to take part actively in the discussions and courses of instruction presented.  
8 Defendant Albert D. Seen Construction Co. shall keep records of attendance and shall grant  
9 certificates to employees completing the courses of instruction. Once all courses of instruction  
10 have been completed, Defendant Albert D. Seen Construction Co. shall repeat said courses in  
11 accordance with the frequency of hiring new employees and shall establish a procedure by which  
12 appropriate court decisions and statute modifications are reviewed on an annual basis and any  
13 changes in law noted to the Enjoined Parties as soon as possible. The purpose of this program  
14 shall be to advise supervisory employees and the Enjoined Parties as to changes in the law that  
15 may impact and affect permitting activities and obligations.

16 b. Biological Assessments of Defendant's Properties

17 i. Properties Currently in the Development Process (Section A of  
18 Exhibit C): Defendant Albert D. Seen Construction Co. shall comply with all laws, ordinances,  
19 rules and regulations, federal, state and local, relating to delineation of wetlands and biologic  
20 assessment of impacts upon its properties proposed for development and currently in the  
21 development process. Such properties are listed in Section A of Exhibit C attached to this  
22 Stipulation. Defendant Albert D. Seen Construction Co. agrees that as to those properties,  
23 Defendant Albert D. Seen Construction Co. has or will commission official wetland  
24 jurisdictional assessments and biological habitat evaluations, including protocol-level surveys, to  
25 be begun and completed by qualified consultants acceptable to the jurisdictions in which the  
26 properties are located. Copies of such wetland jurisdictional assessments and biological habitat  
27 evaluations, when completed, shall be forwarded to the Department of Fish and Game and to the  
28 Regional Water Board for their information. Within 180 days of entry of the Final Judgment by

1 the Court, Defendant Albert D. Seeno Construction Co. shall submit a certification to the People  
2 that the wetland jurisdictional assessments and biological habitat evaluations of Defendant's  
3 properties listed in Section A of Exhibit C have been completed and that copies of the  
4 assessments and analyses have been delivered to the California Department of Fish and Game  
5 and the Regional Water Board. If Defendant Albert D. Seeno Construction Co. has been  
6 prevented from completing these assessments and analyses within the required time period by  
7 conditions beyond the control of the Defendant, the Parties may agree in writing that a reasonable  
8 extension shall be granted if Defendant provides information to the People that Defendant has  
9 acted in good faith and has used best efforts to anticipate and to address the effects of any  
10 potential delay in order to complete the required assessments and analyses.

11 ii. Properties Not Planned for Development in the Near Future  
12 (Section B of Exhibit C): Wetland jurisdictional assessments and biological habitat evaluations  
13 shall be commenced on the properties listed in Section B of Exhibit C within one (1) year after  
14 the effective date of the Final Judgment. Upon completion, copies of these wetland jurisdictional  
15 assessments and biological habitat evaluations shall be sent directly to the Department of Fish  
16 and Game and to the Regional Water Board. It is the intent of this paragraph that the wetland  
17 jurisdictional assessments and biological habitat evaluations referenced herein shall provide to  
18 the Department of Fish and Game and to the Regional Water Board a general "base line" analysis  
19 and template, pending complete wetland delineations and assessments which will be undertaken  
20 and completed when and if land use entitlements are sought for these properties. These wetland  
21 jurisdictional assessments and biological habitat evaluations shall be prepared by a qualified  
22 professional consultant based upon site visits and observations, analysis of aerial photos and  
23 review of other available biological information and, while general in nature, shall conform, at a  
24 minimum, to the following:

25 A. Wetland Jurisdictional Assessment. The site visit shall be  
26 conducted to identify and photograph areas that may be considered jurisdictional under the Clean  
27 Water Act, Department of Fish and Game's regulatory authority, or under the California Water  
28 Code. These areas will be identified using current guidance and recommendations from the U.S.

1 Army Corps of Engineers, Department of Fish and Game, and the Regional Water Quality  
2 Control Boards, and shall include specification of the characteristics and indicators of  
3 hydrophytic vegetation, hydric soils, and wetland hydrology present on the site. The assessment  
4 is not required to include the establishment of an ordinary high water mark or wetland  
5 boundaries, and is meant to be general in nature and to provide an approximate understanding of  
6 the wetland habitat conditions of these properties.

7 B. Biological Habitat Evaluation. A qualified professional  
8 biologist will conduct on-site reconnaissance to evaluate and photograph existing or present field  
9 conditions relating to fish and wildlife habitat. Special attention will be given to areas that may  
10 potentially support listed or sensitive fish and wildlife species. The evaluation shall include a  
11 review of agency and other pertinent databases and records, although the analysis is not required  
12 to contain detailed surveys or analysis.

13 c. Certification Requirements

14 Within 30 days of entry of the Final Judgment by the Court, Defendant Albert D.  
15 Seeno Construction Co. shall submit a certification to the People that the Instructional Program  
16 for Training has been established for all of the Enjoined Parties and their employees for the  
17 duration of the year in the State of California.. By August 31, 2008, and annually thereafter for  
18 five (5) years, Defendant Albert D. Seeno Construction Co. shall submit a certification to the  
19 People that the Instructional Program for Training has been completed for all of the Enjoined  
20 Parties and their employees for the duration of the year in the State of California. In addition,  
21 Defendant Albert D. Seeno Construction Co. shall provide annual certification to the People that  
22 Defendant Albert D. Seeno Construction Co. has reviewed the Instructional Program for Training  
23 and updated said Program to address intervening changes in applicable California laws.

24 7. MATTERS COVERED BY THIS STIPULATION

25 7.1 This Stipulation is a final and binding resolution and settlement of all  
26 claims alleged in the Complaint in this matter relating to the grading and development of the  
27 Mira Vista Subdivision in Antioch, Contra Costa County, California, or which could have been

28 ///

1 asserted, up until execution of this Stipulation by the Parties, according to statute by or through  
2 the People of the State of California, based on the Claims alleged in the Complaint ("Covered  
3 Matters") against Defendant Albert D. Seeno Construction Co. and its subsidiaries, affiliates and  
4 corporate parents, and each of their affiliates and parents, and their respective officers, directors,  
5 partners, employees, agents, representatives, and property owners. Plaintiffs further covenant not  
6 to sue the entities covered by this settlement for any Covered Matter. Defendant, by making the  
7 payments set forth herein and otherwise satisfying the provisions of this Judgment, shall be  
8 deemed to have satisfied the requirements of the Notice of Violation issued by the Regional  
9 Water Board on April 14, 2006. If the Regional Water Board has a record of the Notice of  
10 Violation in its enforcement report, then pursuant to Water Code Section 13385(o), the Regional  
11 Water Board shall when it updates the enforcement report indicate that the corrective action  
12 taken by the discharger under this Final Judgment satisfies the requirements of the Notice of  
13 Violation. In addition, the Regional Water Board shall notify the City of Antioch, in writing in  
14 the form attached hereto as Exhibit D, that the Notice of Violation and their mitigation concerns  
15 over the Mira Vista project have been satisfied by the requirements of the Final Judgment.

16               **7.2**     The provisions of Paragraph 7.1 are effective as of the date of the entry of  
17 the Final Judgment, but the continuing effect of such provisions is expressly conditioned on  
18 Defendant Albert D. Seeno Construction Co.'s full payment of the statutory penalty, restitution,  
19 costs and other commitment of payments specified in this Stipulation and as incorporated in the  
20 Final Judgment.

21               **7.3**     Paragraphs 7.1 and 7.2 have no effect on the ability of the People to  
22 enforce the terms of the Final Judgment, or to pursue or file a separate or additional action for  
23 any subsequent violation of statutory or regulatory requirements. This Court retains jurisdiction  
24 to address any future claims for injunctive relief, penalty assessment or other relief against  
25 Defendant Albert D. Seeno Construction Co. arising from or related to any alleged or actual  
26 violations of the Final Judgment.

27               **7.4**     Any violations of law, statute, regulation or ordinance, if any, by the  
28 Enjoined Parties which are not based on Claims alleged in the Complaint or addressed as a

1 Covered Matter in this Stipulation, or which occur or exist after the Final Judgment is fully  
2 executed, are not resolved, settled or covered by this Stipulation.

3           **7.5**     The Enjoined Parties covenant not to sue or pursue any civil or  
4 administrative claims against Plaintiffs or agencies of the State of California or their officers,  
5 employees, representatives, agents or attorneys arising out of or related to any Covered Matter,  
6 except for the purpose of enforcing Plaintiffs' obligations under this Final Judgment.

7           **7.6**     Except as provided by this Stipulation and the Final Judgment, the Parties  
8 reserve the right to pursue any claims not covered by this Stipulation and to defend against such  
9 reserved claims.

10           **8.     NOTICE**

11           All submissions and notices required by the Final Judgment shall be sent to:

12 For Plaintiff:

13           Brett J. Morris  
14           Deputy Attorney General  
15           Office of the Attorney General  
16           1515 Clay Street, 20<sup>th</sup> Floor  
17           P.O. Box 70550  
18           Oakland, California 94612-0550

16 and to:

17           Lauren R. Wixson  
18           Deputy District Attorney  
19           627 Ferry Street  
20           Martinez, CA 94553-0125

19 For Defendant:

20           William M. Goodman, Esq.  
21           Kasowitz, Benson, Torres & Friedman, LLP  
22           101 California Street, Suite 2050  
23           San Francisco, California 94111

23           Any Party may change the address for purpose of notices to that Party by a notice  
24 specifying a new address, but no such change is effective until it is actually received by the Party  
25 sought to be charged with its contents. All notices and other communications required or  
26 permitted under this Stipulation and the Final Judgment that are addressed as provided in this  
27 Paragraph are effective upon delivery if delivered personally or by overnight mail, or are  
28 effective five (5) days following deposit in the United States mail, postage prepaid.

1           **9.       NECESSITY FOR WRITTEN ACCEPTANCE**

2           All acceptances and decisions of the Regional Water Quality Control Board, Central  
3 Valley Region, regarding any matter requiring acceptance or decision under the terms of this  
4 Final Judgment shall be communicated in writing to Defendants. No informal oral advice,  
5 guidance, suggestions, or comments by employees or officials of Plaintiffs or representatives of  
6 any instrumentality, agency, board or department of the State of California, including the  
7 Regional Water Board or Regional Water Board staff, regarding submissions or notices shall be  
8 construed to relieve Defendants of their obligations to obtain the final written acceptances  
9 required by this Stipulation and the Final Judgment.

10           **10.      EFFECT OF JUDGMENT**

11           Except as expressly provided in this Stipulation and in the Final Judgment, nothing in this  
12 Final Judgment is intended nor shall it be construed to preclude Plaintiffs or any state agency,  
13 department, board or entity or any local agency from exercising its authority under any law,  
14 statute, regulation or ordinance at the Mira Vista Subdivision properties.

15           **11.      PLAINTIFFS ARE NOT LIABLE**

16           Plaintiffs shall not be liable for any injury or damage to persons or property resulting  
17 from acts or omissions by the Enjoined Parties, their directors, officers, employees, agents,  
18 representatives or contractors in carrying out activities pursuant to this Stipulation and the Final  
19 Judgment, nor shall Plaintiffs be held as parties to or guarantors of any contract entered into by  
20 the Enjoined Parties, their directors, officers, employees, agents, representatives or contractors in  
21 carrying out activities pursuant to this Stipulation and the Final Judgment.

22           **12.      NO WAIVER OF RIGHT TO ENFORCE**

23           The failure of Plaintiffs to enforce any provision of the Final Judgment shall in no way be  
24 deemed a waiver of such provision, or in any way affect the validity of the Final Judgment. The  
25 failure of Plaintiffs to enforce any such provision shall not preclude them from later enforcing the  
26 same or any other provision of the Final Judgment. The expiration of a deadline contained in this  
27 Stipulation or the Final Judgment does not make the related provision unenforceable; on any  
28 Party's application, the Court may establish a new deadline. No oral advice, guidance,

1 suggestions or comments by employees or officials of any Party regarding matters covered in this  
2 Stipulation or the Final Judgment shall be construed to relieve any Party of its obligations under  
3 the Final Judgment.

4 **13. LEGAL OBLIGATIONS**

5 Nothing in this Stipulation or the Final Judgment shall excuse Defendant Albert D. Seeno  
6 Construction Co., or the Enjoined Parties, from meeting any more stringent requirements effected  
7 by changes in law, statutes, regulations or ordinances. Moreover, nothing in this Final Judgment  
8 exempts the Regional Water Board from Water Code section 13360, subdivision (a).

9 Nothing in this Stipulation or the Final Judgment relieves the Enjoined Parties from the  
10 obligation to obtain all necessary permits, entitlements and authorizations, including any  
11 necessary permits, entitlements or authorizations issued by Contra Costa County or the Regional  
12 Water Board, or from any obligations it has under law, statute, regulation or ordinance, including  
13 their obligations under the Water Code to submit documents and information to the Regional  
14 Water Board pursuant to the Regional Water Board's permitting authority or other authority.  
15 Where the Enjoined Parties' obligations under this Stipulation or the Final Judgment require  
16 them to obtain additional permits, entitlements or authorizations, the Enjoined Parties shall  
17 exercise due diligence in obtaining such permits, entitlements or authorizations.

18 **14. AUTHORITY TO ENTER STIPULATION**

19 Each signatory to this Stipulation certifies that he or she is fully authorized by the Party  
20 he or she represents to enter into this Stipulation, to execute it on behalf of the Party represented  
21 and legally to bind that Party.

22 **15. CONTINUING JURISDICTION.**

23 The Court shall retain continuing jurisdiction to enforce the terms of this Stipulation and  
24 the Final Judgment.

25 **16. INTEGRATION.**

26 This Stipulation constitutes the entire agreement between the Parties and may not be  
27 amended or supplemented except as provided for in this Stipulation or the Final Judgment.

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1           **17.    MODIFICATION OF FINAL JUDGMENT**

2           The Final Judgment may be modified only upon written consent of the Parties and the  
3 approval of the Court.

4           **18.    PAYMENT OF LITIGATION EXPENSES AND FEES**

5           Defendants, and each of them, shall pay their own attorney fees, expert witness fees and  
6 costs, and all other costs of litigation incurred as of Entry of the Final Judgment. Plaintiffs, and  
7 each of them, are entitled to the payments set forth in Paragraph 5.1 above, but otherwise shall  
8 pay their own attorney fees, expert witness fees and costs, and all other costs of litigation  
9 incurred as of Entry of the Final Judgment.

10          **19.    INTERPRETATION**

11          This Stipulation shall be deemed to have been drafted equally by all Parties.  
12 Accordingly, the Parties hereby agree that any and all rules of construction to the effect that  
13 ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning  
14 the terms, meaning, or interpretation of this Stipulation.

15          **20.    COUNTERPART SIGNATURES**

16          This Stipulation may be executed by the Parties in counterpart, and when a copy is signed  
17 by an authorized representative of each Party, the Stipulation shall be effective as if a single  
18 document were signed by all Parties.

19          **21.    PUBLIC NOTICE**

20          Consistent with 40 C.F.R. section 123.27(d)(2)(iii), the Regional Water Board has made  
21 or will make this Stipulation available for public comment.

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**22. ENTRY AFTER NOTICED MOTION**

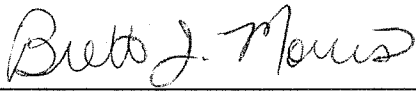
This Stipulation shall be brought before the Court for approval on noticed motion, and the Court shall be requested to make a fairness determination in order to ensure that this Stipulation and the Final Judgment is fair and in the public interest. By executing the Final Judgment, the Court finds that its action results in a full, fair, and final resolution of the claims which were or could have been raised in the Complaint based on the facts alleged therein.

**IT IS SO STIPULATED.**


For Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA:

Dated: 1/9/08

EDMUND G. BROWN JR.  
Attorney General for the State of California

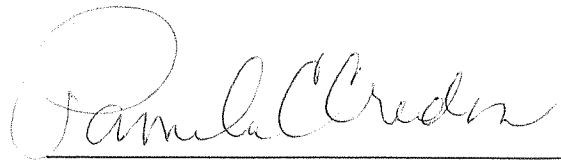
  
BRETT J. MORRIS  
Deputy Attorney General

ROBERT J. KOCHLY  
District Attorney, County of Contra Costa  
LAUREN R. WIXSON  
Deputy District Attorney

  
LAUREN R. WIXSON  
Deputy District Attorney

1 For Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.* THE REGIONAL WATER  
2 QUALITY CONTROL BOARD, CENTRAL VALLEY REGION:

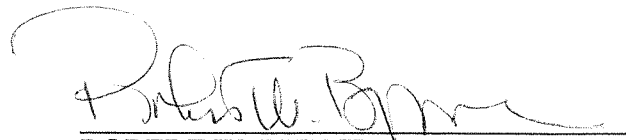
3  
4 Dated: 12-27-07



PAMELA C. CREEDON  
Executive Officer  
for the California Regional Water Quality  
Control Board, Central Valley Region

7 Approved as to Form:

8  
9  
10 Dated: 12/31/07



ROBERT W. BYRNE  
Deputy Attorney General  
Attorney for Plaintiffs, the People of the  
State of California, *ex rel.* the California  
Regional Water Quality Control Board,  
Central Valley Region

16 For Defendant ALBERT D. SEENO CONSTRUCTION CO.:

18 Dated: \_\_\_\_\_

ALBERT D. SEENO CONSTRUCTION  
CO., INC., a California Corporation  
Managing Partner of ALBERT D. SEENO  
CONSTRUCTION CO., limited partnership

22 By: \_\_\_\_\_

ALBERT D. SEENO, JR.  
President of ALBERT D. SEENO  
CONSTRUCTION CO., INC.

24 Approved as to Form:

26 Dated: \_\_\_\_\_

WILLIAM M. GOODMAN, ESQ.  
Kasowitz, Benson, Torres & Friedman, LLP  
Attorneys for Defendant

1 For Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.* THE REGIONAL WATER  
2 QUALITY CONTROL BOARD, CENTRAL VALLEY REGION:

3  
4 Dated: \_\_\_\_\_

5 \_\_\_\_\_  
6 PAMELA C. CREEDON  
Executive Officer  
for the California Regional Water Quality  
Control Board, Central Valley Region

7 Approved as to Form:

8  
9  
10 Dated: \_\_\_\_\_

11 \_\_\_\_\_  
12 ROBERT W. BYRNE  
13 Deputy Attorney General  
Attorney for Plaintiffs, the People of the  
14 State of California, *ex rel.* the California  
15 Regional Water Quality Control Board,  
Central Valley Region

16 For Defendant ALBERT D. SEENO CONSTRUCTION CO.:

17  
18 Dated: 1/2/08

19 \_\_\_\_\_  
20 ALBERT D. SEENO CONSTRUCTION  
CO., INC., a California Corporation  
21 Managing Partner of ALBERT D. SEENO  
CONSTRUCTION CO., limited partnership

22 By: \_\_\_\_\_  
23 ALBERT D. SEENO, JR.  
President of ALBERT D. SEENO  
CONSTRUCTION CO., INC.

24 Approved as to Form:

25  
26 Dated: 1/2/08

27 \_\_\_\_\_  
28 WILLIAM M. GOODMAN, ESQ.  
Kasowitz, Benson, Torres & Friedman, LLP  
Attorneys for Defendant

**EXHIBIT A**

**FORM OF CALIFORNIA GRANT DEED**

RECORDING REQUESTED BY  
AND RECORDED MAIL TO:

East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605-0381  
Attn: N. Wenninger

MAIL TAX STATEMENTS TO:

East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605-0381  
Attn: N. Wenninger

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Documentary Transfer Tax  
Not Shown Pursuant To Revenue  
And Taxation Code Section 11932

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, ALBERT D. SEENO CONSTRUCTION CO., a California limited partnership ("**Grantor**"), hereby grants to EAST BAY REGIONAL PARK DISTRICT, a California special district ("**Grantee**"), all of Grantor's right, title and interest in the real property situated in the City of Antioch, County of Contra Costa, State of California, and more particularly described on **Exhibit A** annexed hereto and made a part hereof, together with all improvements, buildings, structures, easements, privileges and rights appurtenant thereto.

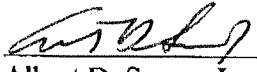
[Signature On Following Page]

IN WITNESS WHEREOF, the Grantor has executed this Grant Deed as of the 2<sup>nd</sup> day  
of January, 2008.

Grantor:

ALBERT D. SEENO CONSTRUCTION  
CO., a California limited partnership

By: ALBERT D. SEENO  
CONSTRUCTION CO., INC., A  
California corporation, its  
Managing Partner

By:   
Albert D. Seeno, Jr.  
Its: President

State of California )  
County of Contra Costa )

## CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On January 2, 2008, before me, Tracey L. Marquit, a Notary Public,  
(here insert name and title of the officer)

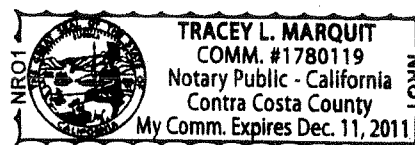
personally appeared Albert D. Seeno, Jr. \*\*\*\*\*

\*\*\*\*\*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the  
State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Tracey L. Marquit

(Seal)

### OPTIONAL INFORMATION

*Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.*

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document

titled/for the purpose of Grant Deed \*\*\*\*\*

\*\*\*\*\*

containing \*\* 5 \* pages, and dated January 2, 2008

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)  
☐ Attorney-in-Fact  
☒ Corporate Officer(s) President \*\*\*\*\*  
Title(s)  
\*\*\*\*\*

- ☐ Guardian/Conservator  
☐ Partner - Limited/General  
☐ Trustee(s)  
☐ Other: \_\_\_\_\_

representing: Albert D. Seeno Construction Co. \*\*\*\*\*  
Name(s) of Person(s) or Entity(ies) Signer is Representing  
\*\*\*\*\*

Additional Information	
<b>Method of Signer Identification</b>	
Proved to me on the basis of satisfactory evidence: <input checked="" type="checkbox"/> form(s) of identification <input type="checkbox"/> credible witness(es)	
Notarial event is detailed in notary journal on: Page # <u>115</u> Entry # <u>4</u>	
Notary contact: _____	
<b>Other</b>	
<input type="checkbox"/> Additional Signer(s)	<input checked="" type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/> _____	

**EXHIBIT A**

**LEGAL DESCRIPTION**

**[See Attached]**

The land referred to is situated in the County of CONTRA COSTA, City of ANTIOCH, State of California, and is described as follows:

PARCEL ONE:

The West ½ of the Southwest ¼ of Section 35, Township 2 North, Range 1 East, Mount Diablo Base and Meridian.

EXCEPTING THEREFROM, that certain real property set forth and described as New Lot 1 and New Lot 2, in that certain Lot Line Adjustment issued by the County of Contra Costa, and recorded November 15, 2006, as Instrument No. 2006-0366335, Contra Costa County Official Records.

PARCEL TWO:

Being a portion of the Southwest Quarter of Section 35, Township 2 North, Range 1 East, Mount Diablo Base and Meridian, Contra Costa County, California, set forth and described as New Lot 1, in that certain Lot Line Adjustment issued by the County of Contra Costa, and recorded November 15, 2006, as Instrument No. 2006-0366335, Contra Costa County Official Records, being more particularly described therein as follows:

Commencing at the Southwest corner of said Section 35, thence along the western section line, North 00° 57' 40" East 655.50 feet to the Point of Beginning; thence from said Point of Beginning, continuing along said section line, North 00° 57' 40" East 496.15 feet; thence leaving said section line South 89° 20' 38" East 1329.67 feet; thence South 00° 59' 45" West 521.80 feet; thence North 88° 14' 19" West 1329.46 feet to the Point of Beginning of the description.

EXCEPTING FROM PARCELS ONE AND TWO DESCRIBED ABOVE:

Rights excepted in the Deed from Everett E. Bettencourt, et al, recorded February 1, 1966, in Book 5048, Official Records, Page 322, as follows:

An undivided 1/2 interest in all oil, gas, casinghead gasoline, and other hydrocarbons and mineral substances below a point 500 feet below the surface of said land, together with the right to take, remove, mine, pass through and dispose of all said oil, gas, casinghead gasoline and other hydrocarbon and mineral substances, but without any right whatsoever to enter upon the surface of said land or upon any part of said land within the upper 500 feet thereof.

Being Assessor's Parcel Number: 75-042-026 and 075-042-027



STATEMENT OF  
DOCUMENTARY TRANSFER TAX

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

AFFIDAVIT OF REAL PROPERTY TRANSFER TAX DUE AND REQUEST THAT  
AMOUNT OF TAX NOT BE MADE A PART OF THE PERMANENT RECORD IN THE  
OFFICE OF THE COUNTY RECORDER

TO: \_\_\_\_\_ COUNTY RECORDER

In accordance with Revenue and Taxation Code Section 11932, request is hereby made that the  
amount of the County of \_\_\_\_\_ Property Transfer tax shall be shown on this  
statement and not be recorded with the attached Grant Deed, and that this statement be affixed to  
the document by the Recorder after the record is made and before the original is returned.

Name of Grantor: \_\_\_\_\_, a \_\_\_\_\_

Name of Grantee: \_\_\_\_\_, a \_\_\_\_\_

The amount of the documentary transfer tax due on the attached Grant Deed, computed on the  
full value of the subject property, is as follows:

County Tax:                   \$ \_\_\_\_\_

City Tax:                   \$ \_\_\_\_\_

[Signature Page To Follow]

I declare under penalty of perjury that the foregoing is true and correct.

Grantor:

\_\_\_\_\_, a

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT B

RECORDED AT THE REQUEST OF AN  
WHEN RECORDED PLEASE RETURN TO:

East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605-0381  
Attn: N. Wenninger

Portions of A.P.Ns. 075-042-023 and 024

### GRANT OF ACCESS EASEMENT

This agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between ALBERT D. SEENO CONSTRUCTION CO., a California limited partnership, ("Grantor") and the EAST BAY REGIONAL PARK DISTRICT, a California Special District ("Grantee").

### RECITALS:

- A. Grantor is the owner of that certain real property consisting of A.P.N. No. 075-042-023, located in the City of Antioch, County of Contra Costa, State of California hereinafter referred to as the "Servient Tenement".
- B. Grantee is the owner of that certain real property located in the City of Antioch, County of Contra Costa, State of California, more particularly described in Exhibit "A", which real property is hereinafter referred to as the "Dominant Tenement".
- C. Grantee owns and will operate the Dominant Tenement for public park, recreation and open space purposes and needs to acquire access rights to the Dominant Tenement.
- D. Grantor desires to grant and Grantee by executing this Agreement accepts the easements contained herein providing that for the benefit of the Dominant Tenement, the Servient Tenement shall be burdened by the easement described herein.

NOW, THEREFORE, it is hereby agreed as follows:

1. Incorporation of Recitals and Exhibits: The recitals in and all exhibits to this Agreement are incorporated into the text of all Agreement as though set forth in full.

2. Grant of Easement: For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor, subject to the terms and conditions contained herein, hereby grants to Grantee a non-exclusive easement appurtenant to the Dominant Tenement for equestrian, pedestrian and vehicular ingress and egress (the "Easement") over the portion of the Servient Tenement identified in Exhibit "B" (the "Easement Area").

3. Temporary Access on the Servient Tenement: The Easement herein granted includes incidental and temporary rights to enter upon the Servient Tenement solely for the purposes of maintaining, repairing and replacing the Easement and all improvements connected therewith so long as such entry and activities are undertaken in a way which shall minimize any impact upon or conflict with the use of the Servient Tenement and as long as such maintenance, repair and replacement is required hereunder.

4. Covenants Running with the Land: The terms and conditions contained in this Agreement shall be and constitute covenants running with the land constituting the Dominant and Servient Tenements and shall be binding upon the parties hereto, their heirs, successors and assigns. An appropriately executed copy of this Agreement shall be recorded in the Official Records of Contra Costa County, California and the provisions hereof shall both bind and benefit the Dominant and Servient Tenements and shall run to all successors and assigns in the Dominant and Servient Tenements and the provisions hereof shall be fully and completely enforceable as covenants running with the land.

5. Improvement, Maintenance, Repair and Replacement in the Easement Area: It shall be the responsibility of Grantee at its sole cost and expense to install, maintain, repair and replace any and all improvements in the Easement Area including paving, fencing (but not gates), drainage, utility facilities and such other improvements and alterations as are needed to use the Easement for the purposes set out herein. Grantee shall take all steps required to keep the Servient Tenement free of any encumbrances and mechanics' liens and in the event any such liens attach, shall immediately take steps to discharge such liens after notice from Grantor.

6. Indemnity: Grantee shall indemnify, protect, defend (with counsel acceptable to Grantor) and hold Grantor, its agents, employees, officers, directors, shareholders, successors and assigns (collectively, "Indemnitees"), and the Easement Area, free and harmless from and against any and all claims, actions, causes of action, suits, obligations, liens, proceedings, costs, expenses (including, without limitation, attorneys' fees and costs), judgments, orders, decrees, damages, or liabilities of any type or kind arising out of or in any way connected with any act, omission or other conduct of Grantee or any of Grantee's officers, agents, contractors, invitees, licensees or other representatives ("Grantee's Representatives"). Grantor's and the other Indemnitees' rights and Grantee's obligations under this section shall in no way be limited or otherwise affected by any insurance otherwise available to Grantor or the other Indemnitees, and such rights and obligations shall be in addition to all rights of Grantor and the other Indemnitees under law and in equity and all obligations of Grantee under law and in equity.

7. Payment of Taxes: The payment of all real property ad valorem taxes assessed against the Easement Area shall be the responsibility of Grantor.

8. Notices: All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered (including by means of professional service) or sent by registered or certified mail, postage prepaid, return receipt requested, to the following addresses and shall be deemed received and effective upon the date of receipt thereof. Said addresses for notice may be changed at any by either party upon prior written notice to the other party. Upon a sale or conveyance of the Dominant or Servient Tenement or other transaction assigning or transferring rights or obligations under this Agreement the transferring party shall endeavor to give written notice to the other party of the name and address of the successor to which notices are to be sent; provided, however, that failure to give such notice shall not constitute a default under the terms hereof.

To Grantor:

Albert D. Seeno Construction Co.  
4021 Port Chicago Highway  
Concord, CA 94520  
Attn: General Counsel

To Grantee:

East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, California 94605-0381  
Attn: N. Wenninger

9. Attorneys' Fees: Should any dispute arise over the terms or conditions of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs.

10. Entire Agreement: This Agreement contains the entire understanding and agreement of the parties hereto relating to the rights herein granted and the obligations herein set forth. Any prior, contemporaneous, or subsequent written or oral representations and modifications concerning this Agreement shall be of no force or effect, except a subsequent modification of this Agreement in writing, signed by the owners of the Servient and Dominant

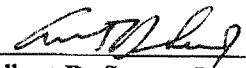
Tenements and properly recorded in the Official Records of the County of Contra Costa, State of California.

Executed the day and year first above written.

**GRANTOR:**

**ALBERT D. SEENO CONSTRUCTION  
CO., a California Limited Partnership**

By: ALBERT D. SEENO  
CONSTRUCTION CO., INC.,  
a California corporation, its  
Managing General Partner

By:   
Albert D. Seeno, Jr.  
Its: President

**GRANTEE:**

**EAST BAY REGIONAL PARK  
DISTRICT, a California Special District**

By: \_\_\_\_\_  
Pat O'Brien  
General Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ted Radosevich  
District Counsel

STATE OF CALIFORNIA

)

)

ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, 2007 before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

*Please see attached.*

STATE OF CALIFORNIA

)

)

ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, 2007 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

State of California )  
County of Contra Costa )

## CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On January 2, 2008, before me, Tracey L. Marquit, a Notary Public,  
(here insert name and title of the officer)

personally appeared Albert D. Seeno, Jr. \*\*\*\*\*

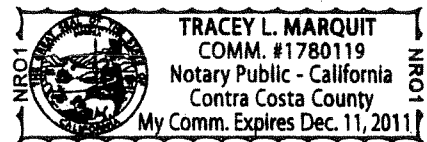
\*\*\*\*\*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tracey L. Marquit



(Seal)

### OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

#### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled for the purpose of Grant of Access Easement

\*\*\*\*\*

containing 12 pages, and dated January 2, 2008

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)  
☐ Attorney-in-Fact  
☒ Corporate Officer(s) President \*\*\*\*\*  
Title(s)  
\*\*\*\*\*

- ☐ Guardian/Conservator  
☐ Partner - Limited/General  
☐ Trustee(s)  
☐ Other: \_\_\_\_\_

representing: Albert D. Seeno Construction Co.  
Name(s) of Person(s) or Entity(ies) Signer is Representing

\*\*\*\*\*

#### Additional Information

##### Method of Signer Identification

Proved to me on the basis of satisfactory evidence:  
☒ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # 115 Entry # 5

Notary contact: \_\_\_\_\_

Other \_\_\_\_\_

☒ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐ \_\_\_\_\_



EXHIBIT "A"

DESCRIPTION OF DOMINANT TENEMENT

MiraVista Heights -  
60 acres

ORDER NO. : 1717000134-ML

### EXHIBIT A

The land referred to is situated in the County of CONTRA COSTA, City of ANTIOCH, State of California, and is described as follows:

**PARCEL ONE:**

The West 1/2 of the southwest 1/4 of Section 35, Township 2 North, Range 1 East, Mount Diablo Base and Meridian

**PARCEL TWO:**

A Portion of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 2 North, Range 3 East, Mount Diablo Base and Meridian, described as follows:

Beginning on the West line of said Southwest 1/4 of the Northwest 1/4 of Section 35, at the Southwest corner of Subdivision 5546, filed May 8, 1980, in Book 238 of Maps, Page 10, Contra Costa County Records; thence from said point of beginning North 71° 08' 00" East, along the Southern line of said Subdivision 5546, 815.19 feet to the Western line of Subdivision 5372, filed January 31, 1980, in Book 235 of Maps, Page 1, Contra Costa County Records; thence along the Western line of said Subdivision 5372, as follows: South 9° 34' 00" East 103.00 feet, South 43° 55' 00" West, 140.00 feet and South 0° 33' 00" East 277.86 feet to the South line of said Southwest 1/4 of Northwest 1/4 of Section 35; thence North 88° 04' 25" West along said South line 676.25 feet to the Southwest corner of the Northwest 1/4 of said Section 35; thence North 0° 57' 40" East, along the West line of said Section 35; 200 feet, more or less, to the point of beginning.

**EXCEPTING FROM PARCELS ONE AND TWO DESCRIBED ABOVE:**

Rights excepted in the Deed from Everett E. Bettencourt, et al, recorded February 1, 1966, in Book 5048, Official Records, Page 322, as follows:

An undivided 1/2 interest in all oil, gas, casinghead gasoline, and other hydrocarbons and mineral substances below a point 500 feet below the surface of said land, together with the right to take, remove, mine, pass through and dispose of all said oil, gas, casinghead gasoline and other hydrocarbon and mineral substances, but without any right whatsoever to enter upon the surface of said land or upon any part of said land within the upper 500 feet thereof.

NOTE: The above described parcels are also shown on the Record of Survey filed October 17, 1990, in Book 96 of Licensed Surveyors Maps, Page 14, Contra Costa County Records.

Being Assessor's Parcel Numbers: 075-042-023; 024; 025 and 075-042-026

EXHIBIT "B"

DESCRIPTION OF EASEMENT AREA

**EXHIBIT B**  
**LEGAL DESCRIPTION**  
**ACCESS EASEMENT**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE GRANT DEED TO ALBERT D SEENO CONSTRUCTION COMPANY RECORDED ON APRIL 22, 1976 IN BOOK 7835 AT PAGE 275 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 20 FEET IN WIDTH, LYING 10 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHWEST CORNER OF LOT .550 AS SAID LOT IS SHOWN ON THE MAP OF SUBDIVISION 5546 FILED ON MAY 8, 1980 IN BOOK 238 OF MAPS AT PAGE 10 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, THENCE ALONG THE SOUTHERLY BOUNDARY LINE OF SAID SUBDIVISION (238 M 10) SAID SOUTHERLY LINE ALSO BEING THE TERMINATING RIGHT OF WAY LINE OF FOOTHILL DRIVE SOUTH 71°08'00" WEST, 30.66 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID SOUTHERLY BOUNDARY LINE SOUTH 09°00'26" EAST, 23.28 FEET;

THENCE, ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 200.00 FEET, THROUGH A CENTRAL ANGLE OF 20°46'07", AND AN ARC LENGTH OF 72.50 FEET;

THENCE SOUTH 11°45'40" EAST, 55.98 FEET;

THENCE, ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 200.00 FEET, THROUGH A CENTRAL ANGLE OF 09°04'05", AND AN ARC LENGTH OF 31.65 FEET;

THENCE SOUTH 02°41'35" EAST, 49.94 FEET;

THENCE, ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 200.00 FEET, THROUGH A CENTRAL ANGLE OF 06°24'30", AND AN ARC LENGTH OF 22.37 FEET;

THENCE SOUTH 09°06'05" EAST, 128.43 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 35 T2N, R1E, MDBM.

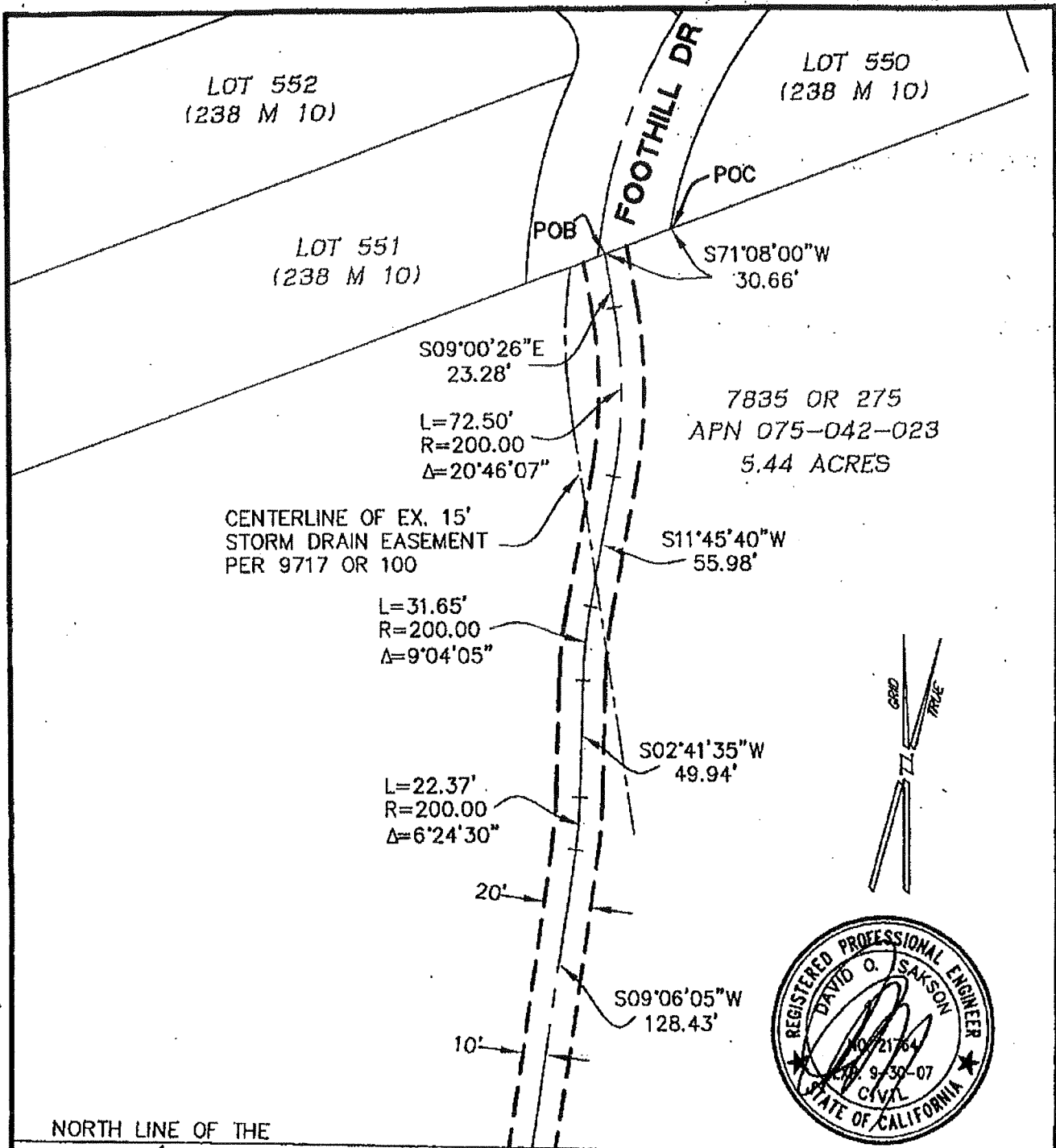
THE SIDE LINES OF SAID 20 FOOT WIDE STRIP OF LAND SHALL BE LENGTHENED OR SHORTENED SO AS TO TERMINATE AT THE NORTH LINE OF SAID PARCEL (7835 OR 275) AND THE NORTH LINE OF SAID SOUTHWEST CORNER OF SECTION 35

CONTAINING: 7,683 SF OF LAND, MORE OR LESS.

END OF DESCRIPTION



S:\2004 JOBS\200411\DWG\PLATS\200411-ACC-EASE-201.dwg, 8/3/2007 9:56:50 AM



7835 OR 275  
APN 075-042-023

**LEGEND**

POB POINT OF BEGINNING  
POC POINT OF COMMENCEMENT

**ISAKSON & ASSOCIATES INC.**

2255 YGNACIO VALLEY ROAD, SUITE C WALNUT CREEK, CA. 94596-3349  
PHONE (925) 937-9333 FAX (925) 937-7926

**EXHIBIT 'B'**  
**ACCESS EASEMENT**

CHECKED BY: DOI

DRAWN BY: BL

JOB NO. 200411

SCALE: 1"=60'

DATE: 08/03/07

SHEET 1 OF 1

**EXHIBIT C**  
**INVENTORY OF UNDEVELOPED PROPERTIES**  
**OF**  
**ALBERT D. SEENO CONSTRUCTION CO.**

A. IN DEVELOPMENT PROCESS

Fieldcrest – Fairfield, CA

Benicia Business Park – Benicia, CA

Riverwalk – Rio Vista, CA

B. PROPERTIES NOT PLANNED FOR DEVELOPMENT IN NEAR

FUTURE

Garibaldi – Fairfield, CA

Chevron – Antioch, CA

Gentry – Antioch, CA

Mira Vista Heights – Antioch, CA (if not transferred as part of settlement)

Oak Glen – Clayton, CA

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF CONTRA COSTA**  
10

11  
12 **PEOPLE OF THE STATE OF CALIFORNIA,**  
13 **and PEOPLE OF THE STATE OF**  
14 **CALIFORNIA, *ex rel.* the REGIONAL**  
**WATER QUALITY CONTROL BOARD,**  
**CENTRAL VALLEY REGION,**

15 Plaintiffs,

16 v.

17 **ALBERT D. SEENO CONSTRUCTION CO.,**  
18 **a California limited partnership, and DOES 1**  
**through 10, inclusive,**

19 Defendant.  
20

Case No. **C08 00071**

**PERMANENT INJUNCTION AND**  
**FINAL JUDGMENT**  
**[PROPOSED]**

21 It appearing to the Court that the Court has jurisdiction over the subject matter and the  
22 Parties; that Plaintiffs, PEOPLE OF THE STATE OF CALIFORNIA and PEOPLE OF THE  
23 STATE OF CALIFORNIA *ex rel.* the REGIONAL WATER QUALITY CONTROL BOARD,  
24 CENTRAL VALLEY REGION, by and through EDMUND G. BROWN JR., Attorney General  
25 of the State of California, BRETT J. MORRIS and ROBERT W. BYRNE, Deputy Attorneys  
26 General, and ROBERT J. KOCHLY, District Attorney of Contra Costa County, LAUREN R.  
27 WIXSON, Deputy District Attorney, and Defendant ALBERT D. SEENO CONSTRUCTION  
28 CO., a California limited partnership, by and through its attorney WILLIAM M. GOODMAN,



1 Kasowitz, Benson, Torres & Friedman have executed a STIPULATION FOR ENTRY OF  
2 FINAL JUDGMENT (the "Stipulation"), attached hereto, which recites, among other things, the  
3 consent of the Parties to the signing of this PERMANENT INJUNCTION AND FINAL  
4 JUDGMENT by the Court, that there is good cause for the entry of this Permanent Injunction and  
5 Final Judgment.

6  
7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

8 **1. JURISDICTION**

9 The Superior Court of California, County of Contra Costa, has subject matter jurisdiction  
10 over the matters alleged in this action and personal jurisdiction over the Parties to this Permanent  
11 Injunction and Final Judgment ("Final Judgment").

12 **2. STATUTORY PAYMENTS AND MONETARY LIABILITY**

13 **2.1 Allocations:** Defendant is ordered to convey a sixty acre parcel and  
14 access easement, as further described below, and is further ordered to pay a total of Two Million,  
15 Nine Hundred, Fifty Thousand Dollars (\$2,950,000.00). All payments shall be made within ten  
16 (10) days of issuance and entry of this Permanent Injunction and Final Judgment. The payments  
17 shall be allocated as follows:

18 a. Statutory Civil Liability: One Million, Five Hundred Thousand  
19 Dollars (\$1,500,000.00) shall be paid by Defendant, to be disbursed as follows:

20 i. Five Hundred Thousand Dollars (\$500,000.00), and any  
21 interest derived therefrom, in statutory civil liability pursuant to Water Code sections 13268 and  
22 13385, shall be made payable to the State Water Resources Control Board, Cleanup and  
23 Abatement Account. This separate statutory civil liability payment shall be placed in a fund  
24 administered by the State Water Resources Control Board pursuant to Water Code sections  
25 13340 and 13341. This separate statutory civil liability payment shall be delivered to the Office  
26 of the California Attorney General.

27 ii. Five Hundred Thousand Dollars (\$500,000.00), and any  
28 interest derived therefrom, as statutory civil liability pursuant to Fish and Game Code sections

1 1615 and 5650.1, shall be paid by Defendant in two separate payments - the first portion of this  
2 payment of statutory civil liability shall be made in the total of Two Hundred and Fifty Thousand  
3 Dollars (\$250,000.00) and shall be made payable to the California Department of Fish and Game  
4 - Fish and Game Preservation Fund, which shall be deposited and expended pursuant to Fish and  
5 Game Code section 13000 *et seq.*; the second portion of this payment of statutory civil liability  
6 shall be made in the total of Two Hundred and Fifty Thousand Dollars (\$250,000.00) and shall  
7 be made payable to the Contra Costa County Treasurer, to be deposited in the Contra Costa  
8 County Fish and Wildlife Propagation Fund for expenditure pursuant to Fish and Game Code  
9 section 13100 *et seq.* These two separate statutory civil liability payments shall be delivered to  
10 the Office of the Contra Costa County District Attorney.

11                                   iii.     Two Hundred and Fifty Thousand Dollars (\$250,000.00),  
12 and any interest derived therefrom, in statutory civil liability pursuant to Business and  
13 Professions Code section 17206, shall be placed in a fund administered by the California  
14 Department of Justice and shall be used by the Public Rights Division of the Attorney General's  
15 Office, until all funds are exhausted, for any of the following purposes: (1) implementation of the  
16 Attorney General's authority to protect the environment and natural resources of the State  
17 pursuant to Government Code section 12600 *et seq.* and as Chief Law Officer of the State of  
18 California pursuant to Cal. Const., Art. V., §13; (2) implementation of the California  
19 Environmental Quality Act; (3) enforcement of the Safe Drinking Water and Toxic Enforcement  
20 Act of 1986; and (4) other environmental enforcement actions which benefit the State of  
21 California and its citizens as determined by the Attorney General. Such funding may be used for  
22 the costs of the Attorney General's investigation, filing fees and other court costs, payment to  
23 expert witnesses and technical consultants, purchase of equipment, laboratory analyses,  
24 personnel costs, travel costs, and other costs necessary to pursue the investigation, prosecution,  
25 or enforcement of environmental actions investigated or initiated by the Attorney General for the  
26 benefit of the State of California and its citizens. The statutory monetary payments referred to in  
27 this subdivision, and any interest derived therefrom shall solely and exclusively augment the  
28 budget of the Attorney General's Office as it pertains to the Environment Section of the Public

1 Rights Division and in no manner shall supplant or cause any reduction of any portion of the  
2 Attorney General's budget. This separate civil liability payment shall be delivered to the Office  
3 of the California Attorney General.

4 iv. Two Hundred and Fifty Thousand Dollars (\$250,000.00),  
5 and any interest derived therefrom, as statutory civil liability pursuant to Business and  
6 Professions Code section 17206, and shall be made payable to the Contra Costa County  
7 Treasurer. This separate statutory civil liability payment shall be delivered to the Office of the  
8 Contra Costa County District Attorney.

9 b. Restitutionary Obligations: For the recovery as mitigation and  
10 replacement of environmental harm and losses caused to the watercourse features on Defendant's  
11 property and associated habitat and environment values, Defendant shall be liable to and is  
12 hereby ordered to pay or convey the following:

13 i. A 60-acre parcel in Antioch, California, more particularly  
14 described in Exhibit A attached to the Stipulation (the "60 Acre Parcel"), in Fee title granted to  
15 the East Bay Regional Park District, together with an access easement (the "Easement") in the  
16 form and across real property set out and described in Exhibit B attached to the Stipulation.  
17 Defendant and all affiliated persons and entities bound by this Stipulation and the Final Judgment  
18 shall take all steps necessary to convey the 60 Acre Parcel and Easement to East Bay Regional  
19 Park District, in the following manner:

20 A. Escrow: Upon or before issuance and entry of the  
21 Permanent Injunction and Final Judgment, Defendant and East Bay Regional Park District shall  
22 open an escrow with Old Republic Title Insurance Company, Fairfield, California, Office, and  
23 deposit therein a validly executed Grant Deed in the form attached to the Stipulation as Exhibit  
24 A, and a Grant of Easement in the form attached to the Stipulation as Exhibit B, which shall both  
25 then be validly executed by East Bay Regional Park District. Defendant shall also deposit and  
26 pay all costs of escrow and any other closing costs, including any applicable recording fees and  
27 transfer tax. Escrow shall close within ten (10) days of the issuance and entry of the Permanent  
28 Injunction and Final Judgment.

1 B. Title Insurance: East Bay Regional Park District  
2 shall pay the premium for any desired title insurance, insuring title to the 60 Acre Parcel and the  
3 Easement in East Bay Regional Park District, subject to all encumbrances then of record.

4 C. Endowment: The sum of Fifty Thousand Dollars  
5 (\$50,000.00) shall be paid by Defendant to the East Bay Regional Park District for use by the  
6 East Bay Regional Park District on the 60 Acre Parcel and the Easement solely for endowment  
7 purposes, including fencing, gates, repairs, replacement, road maintenance, and other habitat  
8 conservation purposes and protection activities on the 60 Acre Parcel and the Easement.

9 ii. One Million, One Hundred and Seventy-Five Thousand  
10 Dollars (\$1,175,000.00), shall be paid to the California Wildlife Foundation, a non-profit  
11 corporation, which shall be held in trust for the East Contra Costa County Habitat Conservancy,  
12 to be used by the East Contra Costa County Habitat Conservancy for the purpose of land and  
13 habitat acquisition, habitat restoration of those lands, or enhancement, conservation, protection,  
14 and maintenance of habitat lands that support creek or watercourse features in East Contra Costa  
15 County. This separate restitution payment shall be made payable to the California Wildlife  
16 Foundation, and shall be delivered to the Office of the Contra Costa County District Attorney  
17 within ten (10) days of issuance and entry of the Final Judgment.

18 c. Supplemental Environmental Projects: One Hundred and Twenty-  
19 Five Thousand Dollars (\$125,000.00), under the doctrine of *cy pres* restitution due to the  
20 impossibility of identifying direct damages to the resources of the State of California, shall be  
21 paid to "American Rivers" to be used to complete construction of a fish ladder for enhanced  
22 environmental restoration and creek improvements on Marsh Creek. These funds shall be  
23 expended only for use in constructing a fish ladder at the Marsh Creek drop structure in  
24 Brentwood, in order to benefit Chinook salmon and anadromous steelhead of Contra Costa  
25 County. On June 30, 2008, and every six months thereafter, American Rivers shall provide a  
26 report to the Office of the Attorney General detailing the work performed to date on the project,  
27 the expenditure of these funds towards the project, and the work expected to be conducted in the

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1 next six months. At the completion of the project, American Rivers shall provide a report to the  
2 Office of the Attorney General to account for the use of these funds on the project.

3 d. Costs of Investigation and Enforcement: One Hundred Thousand  
4 Dollars (\$100,000.00), as reimbursement for partial recovery of investigative costs and attorneys'  
5 fees in this matter, to be disbursed as follows:

6 i. Fifty Thousand Dollars (\$50,000.00), made payable to the  
7 California Department of Fish and Game - Fish and Wildlife Pollution Account, which shall be  
8 delivered to the Office of the California Attorney General. This payment satisfies all claims of  
9 the Department of Fish and Game pursuant to Fish and Game Code section 13013.

10 ii. Forty Thousand Dollars (\$40,000.00), made payable to the  
11 State Water Resources Control Board, Cleanup and Abatement Account, which shall be  
12 delivered to the Office of the California Attorney General.

13 iii. Five Thousand Dollars (\$5,000.00), made payable to the  
14 Office of the California Attorney General, which shall be delivered to the Office of the California  
15 Attorney General.

16 iv. Five Thousand Dollars (\$5,000.00), made payable to the  
17 Office of the Contra Costa County District Attorney, which shall be delivered to the Office of the  
18 Contra Costa County District Attorney.

19 **2.2 Payment Procedures:** The payments imposed on Defendant pursuant to  
20 Paragraph 2.1 shall be made by certified or cashier's checks or wire transfer. All payments made  
21 by check shall be delivered to the named Party. In the alternative, payments may be made by  
22 wire transfer and such transfers shall be electronically transmitted to an account and routing  
23 number as directed in writing by the Party to Defendant.

24 **2.3 Payment Verification:** A photocopy of all of the payments made by  
25 Defendant pursuant to Paragraph 2.1 (or electronic confirmation of the wire transfer) shall be  
26 sent, at the same time that they are delivered or transferred for payment, to each Party's  
27 representative.

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1           **3.     PERMANENT INJUNCTION**

2           **3.1     Application:** The injunctive provisions contained in this Final Judgment  
3 are applicable to Defendant Albert D. Seeno Construction Co., a California limited partnership,  
4 its affiliated companies and entities, including Albert D. Seeno Construction Co., Inc., its  
5 managing partner, and all other related entities and their owners, partners, officers, employees,  
6 subsidiary corporations, or other entities acting by, through, under, or on behalf of Defendant  
7 Albert D. Seeno Construction Co., with actual or constructive knowledge of this Stipulation and  
8 of the Permanent Injunction and Final Judgment (collectively, "Enjoined Parties"). Any  
9 violation of the Permanent Injunction required by the Stipulation and this Final Judgment shall  
10 be considered separate and in addition to any violation of California statutory or regulatory  
11 requirements.

12           **3.2     Prohibitory Terms:** Pursuant to provisions of Fish and Game Code  
13 sections 1615 and 5650.1, Water Code sections 13304 and 13385, and Business and Professions  
14 Code section 17203, and the Court's equitable powers, the Enjoined Parties agree to be  
15 permanently enjoined from:

- 16           a.     Committing any violations of the California Fish and Game Code;  
17           b.     Committing any violations of the California Water Code, including the  
18                 Porter-Cologne Act;  
19           c.     Committing any violations of the federal and California Endangered  
20 Species Act;  
21           d.     Committing any violations of the federal Clean Water Act;  
22           e.     Committing any violations of the California Business and Professions  
23 Code.

24           **3.3     Mandatory Terms:**

- 25           a.     Instructional Program for Training  
26                 Defendant Albert D. Seeno Construction Co. shall designate an appropriate  
27 supervisory employee, with requisite environmental training and experience, who shall be  
28 responsible for coordinating and performing with trained and experienced qualified professionals

1 and consultants, to establish instructional and educational courses for the Enjoined Parties and  
2 their employees who are involved in land development processing and permitting. The  
3 instructional program required herein shall be conducted for a five (5) year period commencing  
4 in 2007. Defendant Albert D. Seeno Construction Co. shall implement courses of instruction for  
5 the Enjoined Parties and their employees to explain the legal requirements relating to  
6 environmental, water quality, wetlands, and habitat conservation and protection, and shall  
7 instruct the employees in the appropriate methods for compliance with such requirements.  
8 Defendant Albert D. Seeno Construction Co. shall devise and implement instructional courses  
9 with trained and experienced professionals and consultants in the following areas:

10 i. CEQA: California Environmental Quality Act (“CEQA”)  
11 comprehension and the methods of assuring compliance with CEQA and with appropriate  
12 mitigation measures derived and imposed as a part of project approval.

13 ii. Clean Water Act: Permitting requirements under the Clean Water  
14 Act and methods by which Section 404 and other federal permits can be applied for and obtained  
15 from the U.S. Army Corps of Engineers. This course of instruction shall include an explanation  
16 of the process of wetland delineations and the interface between wetland determination and  
17 mitigation and project approval.

18 iii. Porter-Cologne Act: The requirements of the Porter-Cologne Act  
19 and other requirements of the State Water Quality Control Board including issuance of Section  
20 401 certifications and issuance of waste discharge permits for waters of the state. In compiling  
21 the instructional program on this subject, Defendant Albert D. Seeno Construction Co. shall  
22 obtain instructional materials from the Regional Water Quality Control Board that it may have  
23 available to include in the program.

24 iv. Endangered Species Acts: Requirements of the Endangered  
25 Species Act shall be explained in the context of development approvals and the process for  
26 mitigating and avoiding impacts shall be fully and completely explained so that any Enjoined  
27 Parties are aware of the appropriate methods for determining and mitigating any impacts and  
28 avoiding “takes” of endangered species.

1 v. Fish and Game Requirements: Requirements of the State of  
2 California Department of Fish and Game shall be the subject of another program and  
3 instructional materials shall be provided explaining how compliance can be obtained.  
4 Discussions of the applicability of streambed alteration agreements under the authority of Fish  
5 and Game Code section 1600 *et seq.*, biological assessments and appropriate onsite and offsite  
6 mitigation measures shall be put in the context of habitat impact mitigation and project approval.  
7 Defendant Albert D. Seeno Construction Co. shall, in compiling this program, obtain any  
8 educational or other materials from the State Department of Fish and Game that might be  
9 available for distribution to employees who may be involved in the process of obtaining  
10 agreements pursuant to Fish and Game Code section 1600 *et seq.*

11 vi. Instructional Process: These five (5) separate subjects may be  
12 combined in courses of instruction and shall be conducted at Defendant Albert D. Seeno  
13 Construction Co.'s head office or such other location as may be convenient. The courses shall be  
14 completed by the end of July 2008. All Enjoined Parties shall be required to attend the courses  
15 and encouraged to take part actively in the discussions and courses of instruction presented.  
16 Defendant Albert D. Seeno Construction Co. shall keep records of attendance and shall grant  
17 certificates to employees completing the courses of instruction. Once all courses of instruction  
18 have been completed, Defendant Albert D. Seeno Construction Co. shall repeat said courses in  
19 accordance with the frequency of hiring new employees and shall establish a procedure by which  
20 appropriate court decisions and statute modifications are reviewed on an annual basis and any  
21 changes in law noted to the Enjoined Parties as soon as possible. The purpose of this program  
22 shall be to advise supervisory employees and the Enjoined Parties as to changes in the law that  
23 may impact and affect permitting activities and obligations.

24 b. Biological Assessments of Defendant's Properties

25 i. Properties Currently in the Development Process (Section A of  
26 Exhibit C to the Stipulation): Defendant Albert D. Seeno Construction Co. shall comply with all  
27 laws, ordinances, rules and regulations, federal, state and local, relating to delineation of  
28 wetlands and biologic assessment of impacts upon its properties proposed for development and



1 currently in the development process. Such properties are listed in Section A of Exhibit C to the  
2 Stipulation. Defendant Albert D. Seeno Construction Co. agrees that as to those properties,  
3 Defendant Albert D. Seeno Construction Co. has or will commission official wetland  
4 jurisdictional assessments and biological habitat evaluations, including protocol-level surveys, to  
5 be begun and completed by qualified consultants acceptable to the jurisdictions in which the  
6 properties are located. Copies of such wetland jurisdictional assessments and biological habitat  
7 evaluations, when completed, shall be forwarded to the Department of Fish and Game and to the  
8 Regional Water Board for their information. Within 180 days of entry of the Final Judgment by  
9 the Court, Defendant Albert D. Seeno Construction Co. shall submit a certification to the People  
10 that the wetland jurisdictional assessments and biological habitat evaluations of Defendant's  
11 properties listed in Section A of Exhibit C to the Stipulation have been completed and that copies  
12 of the assessments and analyses have been delivered to the California Department of Fish and  
13 Game and the Regional Water Board. If Defendant Albert D. Seeno Construction Co. has been  
14 prevented from completing these assessments and analyses within the required time period by  
15 conditions beyond the control of the Defendant, the Parties may agree in writing that a reasonable  
16 extension shall be granted if Defendant provides information to the People that Defendant has  
17 acted in good faith and has used best efforts to anticipate and to address the effects of any  
18 potential delay in order to complete the required assessments and analyses.

19                   ii.     Properties Not Planned for Development in the Near Future  
20 (Section B of Exhibit C to the Stipulation): Wetland jurisdictional assessments and biological  
21 habitat evaluations shall be commenced on the properties listed in Section B of Exhibit C to the  
22 Stipulation within one (1) year after the effective date of the Final Judgment. Upon completion,  
23 copies of these wetland jurisdictional assessments and biological habitat evaluations shall be sent  
24 directly to the Department of Fish and Game and to the Regional Water Board. It is the intent of  
25 this paragraph that the wetland jurisdictional assessments and biological habitat evaluations  
26 referenced herein shall provide to the Department of Fish and Game and to the Regional Water  
27 Board a general "base line" analysis and template, pending complete wetland delineations and  
28 assessments which will be undertaken and completed when and if land use entitlements are

1 sought for these properties. These wetland jurisdictional assessments and biological habitat  
2 evaluations shall be prepared by a qualified professional consultant based upon site visits and  
3 observations, analysis of aerial photos and review of other available biological information and,  
4 while general in nature, shall conform to the following:

5                   A.     Wetland Jurisdictional Assessment. The site visit shall be  
6 conducted to identify and photograph areas that may be considered jurisdictional under the Clean  
7 Water Act, Department of Fish and Game's regulatory authority, or under the California Water  
8 Code. These areas will be identified using current guidance and recommendations from the U.S.  
9 Army Corps of Engineers, Department of Fish and Game, and the Regional Water Quality  
10 Control Boards, and shall include specification of the characteristics and indicators of  
11 hydrophytic vegetation, hydric soils, and wetland hydrology present on the site. The assessment  
12 is not required to include the establishment of an ordinary high water mark or wetland  
13 boundaries, and is meant to be general in nature and to provide an approximate understanding of  
14 the wetland habitat conditions of these properties.

15                   B.     Biological Habitat Evaluation. A qualified professional  
16 biologist will conduct on-site reconnaissance to evaluate and photograph existing or present field  
17 conditions relating to fish and wildlife habitat. Special attention will be given to areas that may  
18 potentially support listed or sensitive fish and wildlife species. The evaluation shall include a  
19 review of agency and other pertinent databases and records, although the analysis is not required  
20 to contain detailed surveys or analysis.

21                   c.     Certification Requirements

22                   Within 30 days of entry of the Final Judgment by the Court, Defendant Albert D.  
23 Seeno Construction Co. shall submit a certification to the People that the Instructional Program  
24 for Training has been established for all of the Enjoined Parties and their employees for the  
25 duration of the year in the State of California.. By August 31, 2008, and annually thereafter for  
26 five (5) years, Defendant Albert D. Seeno Construction Co. shall submit a certification to the  
27 People that the Instructional Program for Training has been completed for all of the Enjoined  
28 Parties and their employees for the duration of the year in the State of California. In addition,

1 Defendant Albert D. Seen Construction Co. shall provide annual certification to the People that  
2 Defendant Albert D. Seen Construction Co. has reviewed the Instructional Program for Training  
3 and updated said Program to address intervening changes in applicable California laws.

4       **4.     NOTICE**

5       All submissions and notices required by this Final Judgment shall be sent to:

6 For Plaintiff:

7       Brett J. Morris  
8       Deputy Attorney General  
9       Office of the Attorney General  
10      1515 Clay Street, 20<sup>th</sup> Floor  
11      P.O. Box 70550  
12      Oakland, California 94612-0550

13 and to:

14      Lauren R. Wixson  
15      Deputy District Attorney  
16      627 Ferry Street  
17      Martinez, CA 94553-0125

18 For Defendants:

19      William M. Goodman, Esq.  
20      Kasowitz, Benson, Torres & Friedman, LLP  
21      101 California Street, Suite 2050  
22      San Francisco, California 94111

23       Any Party may change the address for purpose of notices to that Party by a notice  
24 specifying a new address, but no such change is effective until it is actually received by the Party  
25 sought to be charged with its contents. All notices and other communications required or  
26 permitted under this Final Judgment that are addressed as provided in this Paragraph are effective  
27 upon delivery if delivered personally or by overnight mail, or are effective five (5) days following  
28 deposit in the United States mail, postage prepaid.

29       **5.     NECESSITY FOR WRITTEN ACCEPTANCE**

30       All acceptances and decisions of the Regional Water Quality Control Board, Central  
31 Valley Region, regarding any matter requiring acceptance or decision under the terms of this  
32 Final Judgment shall be communicated in writing to Defendants. No informal oral advice,  
33 guidance, suggestions, or comments by employees or officials of Plaintiffs or representatives of

1 under the Water Code to submit documents and information to the Regional Water Board  
2 pursuant to the Regional Water Board's permitting authority or other authority. Where the  
3 Enjoined Parties' obligations under the Final Judgment require them to obtain additional permits,  
4 entitlements or authorizations, the Enjoined Parties shall exercise due diligence in obtaining such  
5 permits, entitlements or authorizations. Defendant, by making the payments set forth herein and  
6 otherwise satisfying the provisions of this Judgment, shall be deemed to have satisfied the  
7 requirements of the Notice of Violation issued by the Regional Water Board on April 14, 2006.  
8 If the Regional Water Board has a record of the Notice of Violation in its enforcement report,  
9 then pursuant to Water Code Section 13385(o), the Regional Water Board shall when it updates  
10 the enforcement report indicate that the corrective action taken by the discharger under this Final  
11 Judgment satisfies the requirements of the Notice of Violation. In addition, the Regional Water  
12 Board shall notify the City of Antioch, in writing in the form attached hereto as Exhibit D, that  
13 the Notice of Violation and their mitigation concerns over the Mira Vista project have been  
14 satisfied by the requirements of the Final Judgment.

15 **9. CONTINUING JURISDICTION**

16 The Court shall retain continuing jurisdiction to enforce the terms of this Final Judgment.

17 **10. MODIFICATION OF FINAL JUDGMENT**

18 This Final Judgment may be modified only upon written consent of the Parties and the  
19 approval of the Court.

20 **11. PUBLIC NOTICE**

21 Consistent with 40 C.F.R. section 123.27(d)(2)(iii), the Regional Water Board has made  
22 or will make this Final Judgment available for public comment.

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**12.    ENTRY AFTER NOTICED MOTION**

      This Final Judgment shall be brought before the Court for approval on noticed motion, and the Court shall be requested to make a fairness determination in order to ensure that this Final Judgment is fair and in the public interest. By entering this Final Judgment, the Court finds that its action results in a full, fair, and final resolution of the claims which were or could have been raised in the Complaint based on the facts alleged therein.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
CONTRA COSTA COUNTY SUPERIOR COURT